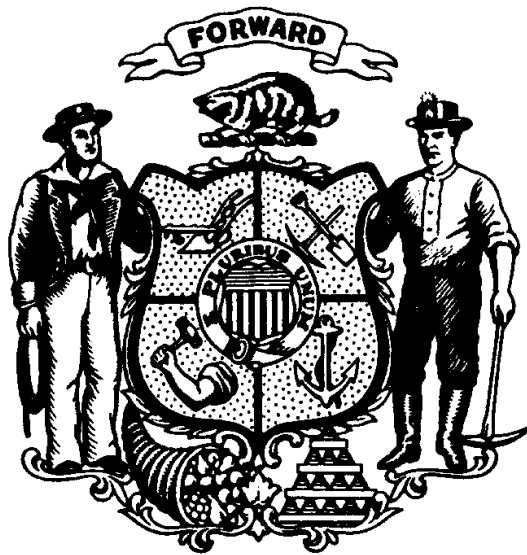


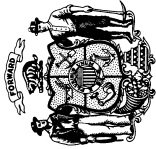
WISCONSIN ADMINISTRATIVE REGISTER

No. 493



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EMERGENCY RULES NOW IN EFFECT

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

EMERGENCY RULES NOW IN EFFECT

Department of Agriculture, Trade & Consumer Protection

Rule adopted creating s. ATCP 139.04 (11), relating to prohibiting the sale of butane, propane, mixtures of butane and propane, or other gaseous hydrocarbons for use as refrigerants in mobile air conditioners.

Finding of Emergency

(1) On June 2, 1995, the United States Environmental Protection Agency ("EPA") issued a final rule prohibiting the use of HC-12a, a hydrocarbon-based refrigerant containing liquified petroleum gas, as a refrigerant in mobile air conditioning systems. EPA prohibited HC-12a, and a predecessor product called OZ-12, because of safety risks associated with the use of flammable refrigerants in mobile air conditioning systems. According to EPA, the manufacturer of HC-12a did not provide adequate information to demonstrate that the product was safe when used in a mobile air conditioning system.

(2) Despite the current EPA rule, at least one company is currently engaged in manufacturing and distributing HC-12a for use in motor vehicle air conditioning systems. The Idaho manufacturer argues that EPA lacks jurisdiction to regulate the sale of its product. HC-12a is currently being offered, distributed or promoted for sale at wholesale and retail outlets in Wisconsin and surrounding states, for use as a refrigerant in mobile air conditioning systems.

(3) HC-12a is a highly flammable substance, as defined by the American Society of Testing and Materials (ASTM) standard test procedure for refrigerants, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE), and Underwriter's Laboratories. Use of HC-12a or its predecessor, OZ-12, in mobile air conditioning systems is inconsistent with standards adopted by the Society of Automotive Engineers.

According to those standards, refrigerants used in mobile air conditioning systems must be of low toxicity, and must be nonflammable and nonexplosive.

(4) At least 13 states have enacted legislation prohibiting the sale of refrigerants for use in air conditioning or refrigeration systems unless those refrigerants meet flammability standards or are specifically approved for their intended use.

(5) HC-12a and other hydrocarbon-based refrigerants, when sold for use in motor vehicle air conditioning systems, present a serious risk to public health and safety for the following reasons:

(a) Motor vehicles and mobile air conditioning systems are not currently designed to use flammable refrigerants, or to prevent hazards associated with flammable refrigerants.

(b) Refrigerants in mobile air conditioning systems commonly leak into the engine compartments or passenger compartments of motor vehicles. Leaking refrigerant is often routed into the passenger compartment through the air distribution system from the evaporator. Hydrocarbon refrigerants, which are heavier than air, will tend to accumulate in low or confined spaces of a motor vehicle.

(c) Hydrocarbon refrigerants are flammable at low concentrations.

(d) Internal components of a motor vehicle provide many potential sources of ignition for flammable refrigerants. Passenger activities, such as smoking, may also create ignition sources.

(e) Fires or explosions resulting from the ignition of leaked flammable refrigerant may cause serious bodily injury or death to motor vehicle passengers. Automotive technicians who test for leaks, or who repair or service mobile air conditioning systems containing flammable refrigerants, are also at risk.

(6) The risk to public health and safety cannot be adequately addressed by product packaging or labeling, for the following reasons:

(a) The use of flammable hydrocarbon-based products in motor vehicle air conditioning systems is inherently hazardous. That hazard will not be materially altered by mere packaging or labeling.

(b) Use is hazardous to persons who are not aware that the refrigerant is present, and have not have seen or read the product label.

(c) Current product labels for HC-12a already contain a warning statement that the contents are under pressure and are extremely flammable. Current labels direct use by qualified personnel only, and list other cautions and instructions when recharging a mobile air conditioning system with this substitute refrigerant. These label statements do not materially alter the hazard inherent in the use for which the product is sold. There are few if any protective actions which a customer or technician could take to reduce the hazards associated with use of the product.

(d) There are no automotive industry standards which would allow a flammable refrigerant to be used in a motor vehicle air conditioning system as currently designed.

(7) Flammable hydrocarbon-based refrigerants, including HC-12a, OZ-12, and other refrigerants containing butane, propane, mixtures of butane and propane, or other gaseous hydrocarbons, pose a serious risk to public health and safety when sold for use as refrigerants in mobile air conditioners. At this time, the public health and safety can only be protected by keeping these products out of the channels of commerce in this state. The department can and should adopt rules, under ss. 93.07(1) and 100.37(2), Stats., prohibiting the sale of such products in this state.

(8) Pending the adoption of rules according normal administrative rulemaking procedures, it is necessary to adopt

emergency rules under s. 227.24, Stats., to protect the public health, safety and welfare.

Publication Date: October 9, 1996
Effective Date: October 9, 1996
Expiration Date: March 8, 1997
Hearing Date: November 15, 1996

EMERGENCY RULES NOW IN EFFECT

Department of Commerce

Rules adopted repealing **ch. DOD 13** and creating **ch. Comm 113**, relating to the annual allocation of volume cap.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Historically, s. 560.032, Stats. has been interpreted by the legislature and certain legislative attorneys to provide that the annual allocation for the distribution of volume cap established by the Department of Commerce expires at the end of each calendar year. To comply with this interpretation, the Department is required to repeal and recreate the volume cap rule annually. The proposed permanent rule for 1997 is in process. Without this emergency rule, which is effective upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes, there will be several months during which Wisconsin will be unable to take advantage of the approximately \$260 million of volume cap and thus risk losing the jobs and investment that would be created by Wisconsin businesses that otherwise would make use of the federally subsidized financing during the period. Adoption of the rule will insure that there is no gap in the use of this development tool and that the jobs and investment occur.

Publication Date: December 30, 1996
Effective Date: December 30, 1996
Expiration Date: May 29, 1997
Hearing Date: February 13, 1997
 [See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

Department of Corrections

Rules adopted creating **s. DOC 309.05 (2)(d)**, relating to inmate mail.

Finding of Emergency

The Department of Corrections finds an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Wisconsin state prison inmates outgoing mail is generally not reviewed or censored. Inmates have used mail to:

1. Contact the victims of their crimes, which has caused severe emotional distress;
2. Threaten and harass elected officials, law enforcement officers, and other persons; and
3. Defraud mail order and other businesses.

Since November 1, 1993, pursuant to Internal Management Procedure #35, the department has stamped outgoing inmate mail to indicate that the mail was sent from the Wisconsin state prison system. IMP #35 was adopted to protect victims of crime, the public, and businesses from inmate harassment and fraud.

The Wisconsin Court of Appeals ruled in an unpublished decision that IMP #35 had to be promulgated as an administrative rule.

In order to protect the public welfare of the state, it is necessary for the department to adopt the following emergency rule to ensure that victims of crime are not further victimized by inmate mail, that members of the public are not threatened or harassed, and that businesses are not defrauded.

Publication Date: August 15, 1996
Effective Date: August 15, 1996
Expiration Date: January 12, 1997
Hearing Dates: January 10, 13 & 14, 1997
Extension Through: March 12, 1997

EMERGENCY RULES NOW IN EFFECT (3)

Health and Social Services

(Community Services, Chs. HSS 30---)

1. Rules were adopted revising **ss. HSS 55.70 to 55.76**, relating to administration of child care funds.

Exemption From Finding of Emergency

The Legislature in s. 275 (2) of 1995 Wis. Act 289 directed the Department to promulgate rules relating to public assistance required under chs. 46, 48 and 49, Stats., as affected by the Acts of 1995, before July 1, 1996, for the period before permanent rules take effect, by using emergency rulemaking procedures but without having to make a finding of emergency. These are public assistance-related rules. They are for administration of health care funds. They will take effect on July 1, 1996.

Analysis

The Department's rules for county agency, tribal agency and other child care administrative agency administration of funds for child day care under s. 46.98, Stats., are revised by this order to bring the rules into compliance with statute changes made by 1995 Wis. Acts 27 and 289 and changes in federal regulations, including federal regulations for child care and development block grant funding, 45 CFR Parts 98 and 99, and at-risk child care, 45 CFR Part 257, since the rules were last revised in late 1991; to make policies relating to eligibility for low-income child care more like child care eligibility policies under the Job Opportunities and Basic Skills (JOBS) training program under 42 USC 682 and s. 49.193, Stats.; to prevent and deal with fraud; and to clarify the applicability of certain policies.

Key changes are the following:

1. Income Eligibility

Income eligibility for low income child care is changed to be in compliance with changes made in s. 46.98 (4), Stats., by Act 289.

2. Costs Charged to Parents

Parent co-payment responsibilities are revised to be those established in state law based on family income and the cost of care.

3. Eligibility for Parents in Training or Educational Programs

Parent eligibility to receive low-income child care funds when the parents are in training or educational programs is modified so that only parents under 20 years of age enrolled in high school or an equivalent program are eligible, in compliance with Act 289 changes in the statutes.

4. Loss of Eligibility

A local agency is permitted to determine that a parent is no longer eligible for child care funds if the parent fails to make required co-payments or provides false information to the agency about income or other matters affecting eligibility.

5. Recovery of Funds

Rules are added in compliance with 1995 Wis. Act 27 to provide for recovery of funds from a parent if the parent was not eligible for child care funds, and for recovery of an overpayment made to a provider when the provider is responsible for the overpayment.

6. Reimbursement

Local agencies are permitted to reimburse parents under certain circumstances for the cost of health care services or to make funds available to parents for the purchase of child care services, and local agencies are directed when to reimburse child care providers on the basis of authorized units of service or for days of attendance.

7. Authorized Child Care Providers

Local agencies are permitted to make payments, under certain conditions, to child care providers who are not licensed or certified, including:

- a. When an AFDC recipient is involved in orientation, enrollment or initial assessment in the JOBS program.
- b. When child care is on-site and short-term for parents in training or education programs.
- c. When short-term care is needed for a child who is ill and not allowed to receive care from a regulated provider.

8. Higher Rates for Higher Quality Care

Local agencies are required to pay higher for child care to providers who meet higher quality of care standards, as allowed under federal regulations.

9. Reimbursement Rate Categories

Reimbursement rates are required to two age categories and five provider types, a change from earlier policy.

10. Elimination of Rules for Respite Child Care

Rules for respite child care are eliminated, now that there is no longer a separate fund program. The 1995-97 state budget folded funding for respite child care into general community aids allocations for counties.

Publication Date: June 29, 1996
Effective Date: July 1, 1996
Expiration Date: November 28, 1996
Extension Through: March 27, 1997

2. Rules adopted revising ss. HSS 55.55 to 55.63, relating to certification of child care providers.

Exemption From Finding of Emergency

The Legislature in s. 275 (2) of 1995 Wis. Act 289 directed the Department to promulgate rules relating to public assistance required under chs. 46, 48 and 49, Stats., as affected by the Acts of 1995, before July 1, 1996, for the period before permanent rules take effect, by using emergency rulemaking procedures but without having to make a finding of emergency. These are public assistance-related rules. They are for certified child care. They will take effect on July 1, 1996.

Analysis

The Department's current rules for certification of family day care providers, in-home day care providers and school-age day care programs are amended by this order to bring the rules into compliance with recent statute changes, in particular the changes made by 1995 Wis. Act 289 in establishing Wisconsin Works (W-2), a new system of assistance for families with dependent children which will replace Aid to Families with Dependent Children (AFDC), and to add needed protections for children, reduce or eliminate unnecessary requirements and clarify the authority of certifying agencies.

Key changes include:

1. Provisional Certification

Modifying standards for provisional certification so that no training is required, in compliance with Act 289 changes in the statutes.

2. Limited Certification

Deleting the category of limited certification, in compliance with Act 289 changes in the statutes.

3. Training for Regular Certification

Deleting the optional requirement to add 5 hours of initial training for regular certification, in order to standardize regulation statewide.

4. Criminal Records Check

Adding requirements for state criminal records checks and FBI criminal record check under certain circumstances, as required by Act 289 changes in the statutes.

5. Certification Fee

Permitting counties and tribal agencies to charge certification fees, as allowed under Act 289, not to exceed licensing fees for family day care centers plus the cost of criminal record checks.

6. Acceptance of Certification

Providing that certification issued by one certifying agency is to be accepted as valid by other certifying agencies.

7. Certification Exemption

Exempting specified child care arrangements from certification because those arrangements are short-term.

8. Sanction Authority

Giving sanction authority to certifying agencies when there is danger to the health, safety or welfare of children in care.

9. School-Age Programs

Adding requirements related to swimming pools and water safety.

Adding requirements for the safety of vehicles transporting children.

Deleting requirements for:

- a. Physical exams for children and staff (replaced by a health history requirement).
- b. 75 square feet of outdoor space per child.
- c. Daily outdoor activities.
- d. A place for rest or relaxation.
- e. Ongoing communication with the child's parent.
- f. Making copies of the certification standards available to all parents.

10. Parochial and Private Schools

Deleting rules related to certification of parochial and private schools since those programs can become licensed in order to receive public child care funding.

11. Parent Checklist

Deleting the rules requirement that parents in certified family day care and in-home day care complete and return a checklist of basic certification standards but permitting counties and tribes to continue to require it.

12. Other New or Changed Rules

- a. Clarifying what is acceptable supervision and limiting the number of hours a provider can provide child care per day.
- b. Requiring TB tests for all certified providers.
- c. Requiring proper hand washing for child care providers and children.
- d. Changing the water testing requirement when a public water supply is not available to be a one-time test prior to or within 3 months of initial certification.
- e. Requiring certified providers to report relevant information to the certifying agency.
- f. Prohibiting consumption of alcoholic beverages or controlled substances on the premises during hours of operation.

g. Prohibiting discrimination.

Publication Date: June 29, 1996
Effective Date: July 1, 1996
Expiration Date: November 28, 1996
Extension Through: February 28, 1997

3. Rules adopted repealing s. HSS 55.76 (5), created as an emergency rule relating to the administration of child care funds and required co-payments.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

Congress has just enacted welfare reform legislation which makes major changes to the federal welfare system, in many cases replacing federal entitlements with block grants to the states. The Governor has directed the creation of a Child Care Working Group to analyze the impact that the federal legislation will have on child care in Wisconsin and on the Wisconsin works program, and to analyze and identify effective methods and funding sources to increase child care options and expand the availability of affordable child care. Under these circumstances, it is necessary to withdraw the schedule for child care co-payments and the phase-in co-payment formula which were implemented by emergency rule on July 1 of this year. This will avoid the administrative problems and costs that would otherwise be incurred if these rules are changed again as a result of the new federal law.

Publication Date: August 13, 1996
Effective Date: August 13, 1996
Expiration Date: November 28, 1996
Extension Through: March 27, 1997

EMERGENCY RULES NOW IN EFFECT

Health & Social Services

(Economic Support, Chs. HSS 200-)

Rules adopted creating s. HSS 201.135, relating to time limits on benefits for AFDC recipients participating in the JOBS program.

Exemption From Finding of Emergency

The Legislature in s. 275 (3) of 1995 Wis. Act 289 directed the Department to promulgate the rule required under s. 49.145 (2) (n), stats., as created by Wis. Act 289, by using emergency rulemaking procedures but without having to make a finding of emergency. The rule will take effect on October 1, 1996.

Analysis Prepared by the Department of Workforce Development

Under the Aid to Families with Dependent Children (AFDC) program an individual may apply and be determined eligible for AFDC benefits with no regard to whether the individual has received benefits in the past or the number of months an individual may have already received benefits. Wisconsin Works (W-2), the replacement program for AFDC, as created by 1995 Wis. Act 289, includes a provision limiting the amount of time an individual may receive AFDC benefits, W-2 employment position benefits or a combination thereof. Under s. 49.145 (2) (n), Stats., as created by 1995 Wis. Act 289, the total number of months in which an adult has actively participated in the Job Opportunities and Basic Skills

(JOBS) program under s. 49.193, Stats., or has participated in a W-2 employment position or both may not exceed 60 months. The months need not be consecutive. Extensions to the 60 month time limit may be granted only in unusual circumstances in accordance with rules promulgated by the Department. Section 49.141 (2) (b), Stats., as created by 1995 Wis. Act 289, provides that if a federal waiver is granted or federal legislation is enacted, the Department may begin to implement the W-2 program no sooner than July 1, 1996. Participation in JOBS under s. 49.193, Stats., begins to count toward the 60-month limit beginning on October 1, 1996.

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) was signed into law by President Clinton on August 22, 1996. It creates the Temporary Assistance for Needy Families (TANF) program which proves that a state may not use any part of the TANF grant to provide assistance to a family that includes an adult who has received assistance for 60 months, whether consecutive or not, under a state program funded by the TANF block grant. Wisconsin submitted its TANF Block Grant State Plan to the Federal Administration for Children and Families on August 22, 1996. The Department will implement time limits October 1, 1996, for AFDC recipients who are actively participating in the Job Opportunities and Basic Skills (JOBS) Training Program. Implementation of the time limits is part of the continuing transition from AFDC to the W-2 program. W-2 will be implemented statewide in September 1997.

Time limits reinforce the idea that AFDC is a temporary support for families, rather than a long-term source of income. Wisconsin's Work Not Welfare (WNW) demonstration project which is operating in Fond du Lac and Pierce Counties, has shown that time limits create a sense of urgency for families to actively seek alternatives to AFDC. Time limits stress mutual responsibility: government provides support and services designed to promote employment and participants who are able must prepare for and enter employment.

The rule defines the term "actively participating" in the JOBS program and includes criteria county or tribal economic support agency would use to determine whether an extension of the 60 month time limit should be granted. The Department retains the right to review an economic support agency's decisions related to extensions.

Publication Date: September 30, 1996
Effective Date: October 1, 1996
Expiration Date: February 28, 1997
Hearing Date: November 19, 1996

EMERGENCY RULES NOW IN EFFECT

Industry, Labor & Human Relations

[Workforce Development]
 (Labor Standards, Chs. ILHR 270-279)

Rules adopted revising ch. ILHR 272, relating to the minimum wage.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

The minimum wage set by federal law will be raised to \$4.75 per hour effective October 1, 1996. The federal minimum wage covers many but not all of the employers and employees in the state, and it is not always easy for a particular employer to know if it is covered by state or federal law. If the state did not act quickly to adjust its minimum wage rules in response to the change in federal law, many

employers and employees would be subjected to confusion and uncertainty in the calculation and payment of wages.

Publication Date: August 28, 1996
Effective Date: October 1, 1996
Expiration Date: February 28, 1997
Hearing Date: December 17, 1996

EMERGENCY RULES NOW IN EFFECT (2)

Commissioner of Insurance

1. Rule adopted revising **s. Ins 18.07 (5) (b)**, relating to a decrease in 1996–97 premium rates for the health insurance risk-sharing plan.

Exemption From Finding of Emergency

Pursuant to s. 619.14 (5) (e), Stats., the commissioner is not required to make a finding of an emergency to promulgate this emergency rule.

1996–97 Premium Adjustments

The Commissioner of Insurance, based on the recommendation of the Health Insurance Risk-Sharing Plan (“HIRSP”) board, is required to set the annual premiums by rule. The rates must be calculated in accordance with generally accepted actuarial principles and must be set at 60% of HIRSP’s operating and administrative costs. This rule adjusts the premium rates for the period of October 1, 1996 through June 30, 1997, based upon a recalculation of costs and subsidy payments for the 1996–1997 fiscal year. This adjustment represents a 12% reduction in premium payments for the both the non-subsidized major medical and medicare plans for person under age 65. The rates for low-income persons entitled to a premium reduction under s. Ins 18.07 (5) (b) are not affected.

Publication Date: September 4, 1996
Effective Date: October 1, 1996
Expiration Date: February 28, 1997
Hearing Date: November 8, 1996

2. A rule adopted creating **s. Ins 3.46 (18)**, relating to the requirements for tax deductible long term care insurance.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

The recently passed federal “Kassebaum–Kennedy” law, P.L. 104–191, set certain standards for allowing favorable tax treatment of long term care insurance policies. The existing Wisconsin administrative rules pertaining to long term care do not meet these criteria and require changes. These changes will allow tax

deductible long term care insurance policies to be sold to Wisconsin residents as soon as possible.

Publication Date: December 20, 1996
Effective Date: January 1, 1997
Expiration Date: May 31, 1997

EMERGENCY RULES NOW IN EFFECT (2)

Natural Resources

(Fish, Game, etc., Chs. NR 1–—)

1. Rule adopted creating **s. NR 27.07**, relating to notice of receipt of an application to incidentally take an endangered or threatened species.

Exemption From Finding of Emergency

1995 Wis. Act 296 establishes authority in the department of natural resources to consider applications for and issue permits authorizing the incidental take of an endangered or threatened species while a person is engaged in an otherwise lawful activity. Section 29.415 (6m) (e), Stats., as created, requires the department to establish by administrative rule a list of organizations, including nonprofit conservation groups, that have a professional, scientific or academic interest in endangered species or in threatened species. That provision further provides that the department then give notification of proposed takings under that subsection of the statutes to those organizations and establish a procedure for receipt of public comment on the proposed taking.

The proposed rule lists a number of organizations the department is familiar with as being interested in endangered and threatened species; a notification procedure to be used to notify them, and others, of a proposed taking; and a public comment procedure to be used for consideration of public comments. The notification procedure is not limited to mail distribution, but is broad to allow other forms of notification, such as electronic mail.

Publication Date: November 18, 1996
Effective Date: November 18, 1996
Expiration Date: See section 12m, 1996 Wis. Act 296
Hearing Date: January 14, 1997

2. Rules adopted revising **chs. NR 25 and 26**, relating to the Lake Superior fisheries management plan.

Finding of Emergency

The waters of Lake Superior were not part of the extensive off-reservation treaty rights litigation known as the Voigt case. The parties stipulated that the Lake Superior rights would be dealt with, to the extent possible, by agreement rather than litigation. This rule represents the implementation of the most recent agreement between the State and the red Cliff and Bad River Bands. In order to comply with the terms of the agreement, the State must change its quotas and commercial fishing regulations at the earliest possible date. In accordance with the agreement, the Bands have already made these changes. Failure of the State to do so will not only deprive state fishers of the increased harvest opportunities available under the agreement, but could also jeopardize the agreement, putting the entire Lake Superior fishery at risk of litigation.

Publication Date: November 18, 1996
Effective Date: November 28, 1996
Expiration Date: April 27, 1997
Hearing Date: December 17, 1996

EMERGENCY RULES NOW IN EFFECT (2)

Transportation

1. Rules adopted revising **ch. Trans 76**, relating to general transportation aids.

Finding of Emergency

The Department of Transportation finds that an emergency exists for the following reason: In *Schoolway Transp. Co. v. Division of Motor Vehicles*, 72 Wis. 2d 223 (1976), a changed interpretation of a statute was held to be a rule. The interpretation is being administered as law and the Department will rely upon it to make aids payments. This interpretation is in direct contrast to the manner in which the statute was previously administered by the Department. Therefore, the Department must promulgate the changed interpretation as a rule or it is invalid. In order to make the change in time to implement it for aids estimates and payment purposes, the Department must promulgate this interpretation as an emergency rule.

Publication Date: October 25, 1996
Effective Date: October 25, 1996
Expiration Date: March 24, 1997
Hearing Date: December 16, 1996

- Rules adopted revising **ch. Trans 117**, relating to occupational driver's license.

Finding of Emergency

1995 Wis. Act 269 rewrote state law regarding the issuance of occupational licenses. That Act goes into effect on November 1, 1996. Absent this emergency rule making, the Department will lack rule authority necessary to administer the new law. This emergency rule will permit the Department to issue occupational licenses until the permanent rule establishing procedures for issuing occupational licenses are in place. Therefore, the Department of Transportation finds that an emergency exists and that the rule is necessary.

Publication Date: November 1, 1996
Effective Date: November 1, 1996
Expiration Date: March 31, 1997
Hearing Date: November 26, 1996

EMERGENCY RULES NOW IN EFFECT

Workforce Development (Economic Support)

Rules adopted renumbering **subch. VII of ch. HSS 55** and creating **s. DWD 56.08**, relating to the administration of child care funds and required parent copayments.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

The Governor has directed the Child Care Working Group to analyze the impact that the federal legislation will have on child care in Wisconsin and on the Wisconsin Works program, and to analyze and identify effective methods and funding sources to increase child care options and expand the availability of affordable child care. The Governor has approved a new schedule for child care copayments and this rule places the new schedule into operation. The use of an emergency rule allows the implementation of the new schedule immediately.

Publication Date: December 30, 1996
Effective Date: December 30, 1996
Expiration Date: May 29, 1997

EMERGENCY RULES NOW IN EFFECT

Workforce Development (Wage Rates, Chs. ILHR 290-294)

Rules adopted revising **ch. ILHR 290**, relating to the determination of prevailing wage rates for workers employed on state or local public works projects.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

1995 Wis. Act 213 made a number of major changes to the laws which require the department to determine prevailing wage rates for state and local public works projects. In place of a case-by-case investigations, the Department of Workforce Development is required to conduct an annual survey of employers and issue prevailing wage rate determinations for all trades or occupations in all areas of the state throughout the year based on the survey data. The statutes also provide that members of the public, employers, local governmental units and state agencies may ask the DWD to review prevailing wage rate determinations under a number of specified circumstances.

This emergency rule establishes deadline and appeal criteria for the process that will be used to compile the 1996 survey results and consider requests for review. The use of an emergency rule for this purpose will benefit the public, employers local governments units and state agencies by giving them clear information as to the procedures to be followed, and it will also help the DWD to meet the statutory requirement that prevailing wage rates be compiled and issued promptly.

Publication Date: December 11, 1996
Effective Date: December 11, 1996
Expiration Date: May 10, 1997

STATEMENTS OF SCOPE OF PROPOSED RULES

Commerce

Subject:

Ch. DOD 6, Subchs. I, II and III and ch. Comm 106, Subchs. I, II and III – Relating to block grants under the Department of Commerce's Community Development Block Grant — Public Facilities, Economic Development, Public Facilities Economic Development, and Emergency Grant Programs.

Description of policy issues:

Description of the objective of the rule:

The Department of Commerce proposes to repeal subchapters I, II and III of ch. DOD 6 and to create subchapters I, II and III of ch. Comm 106. The revised rule will:

☐ Streamline the annual competitive process for awarding block grants under the Department of Commerce's Community Development Block Grant — Public Facilities Program;

☐ Bring the Department's Community Development Block Grant — Public Facilities, Economic Development, Public Facilities Economic Development, and Emergency Grant Programs in line with recent changes in applicable federal regulations issued by the U.S. Department of Housing and Urban Development; and,

☐ Require the Department to consider whether an economic development project or public facilities economic development project involves redevelopment of a blighted or brownsfield site.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

Consistent with applicable federal law, a project funded through a grant under the Community Development Block Grant — Public Facilities Program must provide a direct benefit to low- and moderate-income persons, or alternatively, meet an urgent local need. Communities interested in applying for such funding are required to participate in an annual competition, with applications scored based upon a strict scoring system.

Factors considered when scoring each application include:

- ✓ The level of distress;
- ✓ A needs assessment;
- ✓ The amount of detail in the applicant's plan;
- ✓ Past effort;
- ✓ Ability to pay; and,
- ✓ The amount of funds leveraged from other sources.

The Department is proposing:

- ☞ To adopt a more flexible system for evaluating applications;
- ☞ To use distress and other criteria now used in the Department's other economic and community development programs;
- ☞ To make grants available to communities on a semi-annual basis; and,
- ☞ To authorize use of grants for redevelopment of blighted brownsfield and other properties.

Under the existing Community Development Block Grant — Economic Development and Public Facilities Development, the Department does not currently consider whether a project involves the redevelopment of a blighted or brownsfield site. The Department proposes to change that with the new rule.

Under the existing Community Development Block Grant — Emergency Grant Program, the Department may award emergency grants for up to \$500,000 to eligible local governments:

- That have suffered a natural disaster or other catastrophic event;
- That have sustained damage which is beyond the financial capability of the local government; and
- That provide a match equal to one-third of the block grant funds requested.

With the proposed rule, the Department is proposing to clarify the amount of matching contribution required from an applicant, as well as the conditions that would qualify as an "emergency".

Authority for the rule:

42 USC 5301 to 5319

24 CFR Part 570

S. 560.02 (4), Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

The Department estimates that state employees will spend approximately 200 hours developing the proposed rule.

Commerce

Subject:

Ch. Comm 113 – Relating to the allocation of volume cap on private activity bonds for calendar year 1998.

Description of policy issues:

Description of the objective of the rule:

Section 560.032, Stats., requires the Department of Commerce to submit annually a system for the allocation of the volume cap on the issuance of private activity bonds. This statement of scope relates to the creation of a volume cap allocation system for calendar year 1998. Without the proposed rule, the availability of the annual volume cap for Wisconsin 1998 would be uncertain.

The private activity bonding available under the volume cap in Wisconsin during calendar year 1997 is approximately \$258 million. The volume cap during calendar year 1998 will be based upon Wisconsin's 1997 population and should be somewhat higher. Of the total, the Department's proposed rules will allocate:

- \$125 million to the Wisconsin Housing and Economic Development Authority (WHEDA), including \$45 million that, in 1996 and previous years, was set aside and held by the former Department of Development for local issuers for multi-family housing;
- \$10 million will be allocated to the State Building Commission; and,
- The remaining \$123 million will be allocated to the Department of Commerce to be distributed to local issuers for a variety of economic development and other projects.

The Department's proposed rules will be similar to the emergency rule currently in effect for calendar year 1997.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

Consistent with the emergency rule currently in effect for 1997, applications will be evaluated by the Department and an advisory Volume Cap Allocation Council established by the Department under s. 15.04 (1) (c), Stats. Volume cap will be allocated based upon the merits of each project.

Factors that will be considered by the Department and the Council will include, without limitation:

- ✍ The total number of jobs to be created or retained;
- ✍ The wages and benefits to be provided to new and existing employees;
- ✍ The total amount of investment in real estate improvements and capital equipment; and
- ✍ The level of distress in the vicinity of the project.

The Department and the Council may approve an allocation of the unified volume cap if it determines that the project serves a public purpose, the project will likely retain or increase employment in this state, and the project will likely positively affect an area that meets at least 2 of the following criteria:

- a) The unemployment rate in the area is higher than the state average for the 18 months immediately preceding the date on which the application was submitted to the Department;
- b) The percentage of persons residing in the area who are members of households with household income levels at or below 80 percent of the statewide median household income is higher than the state average;
- c) The percentage of households in the area receiving unemployment compensation under ch. 108, Stats., or relief funded by a relief block grant under ch. 49, Stats., is higher than the state average;
- d) In the 36 months immediately preceding the date on which the application was submitted to the Department, a number of workers in the area were permanently laid off by their employer or became unemployed as a result of a business action subject to s. 109.07 (1m), Stats.;
- e) An employer in the vicinity of the area has given public notice under s. 109.07 (1m), Stats., of either a business closing or a mass layoff of at least 25 employees, or 25 percent of the employees, of a business, whichever is greater, that will result in a number of workers in the area being laid off permanently;
- f) Property values in the area have been declining;
- g) There has been a decline in population in the area.

Statutory authority for the rule:

SS. 560.02 (4) and 560.032, Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

The Department estimates that state employees will spend approximately 200 hours developing the proposed rule.

Financial Institutions

Subject:

Ch. CU 55 (DFI-CU 55) – Relating to check cashing, money orders and travelers checks.

Description of policy issues:

Description of the objective of the rule:

The objective is to repeal ch. CU 55.

Description of existing relevant policies and new policies proposed to be included in the rule and an analysis of policy alternatives:

Ch. CU 55 granted authorization to the Commissioner of Credit Unions to issue a certificate of authority for credit unions to issue and sell money orders and travelers checks and to cash checks for a fee or service charge.

1995 Wis. Act 151 ("the Act") was enacted on March 6, 1996 and became effective March 20, 1996. The Act repealed and recreated ch. 186 of the statutes. This represents a total modernization and streamlining of Wisconsin's credit union statutes. Certain provisions of the existing Administrative Code are incorporated into the new provisions of chapter 186, Stats. The provisions of existing ch. CU 55, Wis. Adm. Code, are incorporated into s. 186.113 (9) and (22), Stats., which were created by the Act.

Statutory authority for the rule:

SS. 186.235 (8) and 227.11 (2), Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

Estimated time to be spent by state employees — 40 hours. Review/approval by the Credit Union Review Board — 5 hours.

Financial Institutions

Subject:

Ch. CU 57 (DFI-CU 57) – Relating to retention of credit union books and records.

Description of policy issues:

Description of the objective of the rule:

The objective of this rule is to provide Wisconsin credit unions guidelines for the preservation, retention and destruction of records.

Description of existing relevant policies and new policies proposed to be included in the rule and analysis of policy alternatives:

Ch. CU 57 sets forth the minimum retention periods for credit union accounting and other records, requires credit unions to maintain equipment for viewing or reproducing records maintained on film, and identifies the methods by which credit union records may be destroyed.

It is proposed to change the rule to eliminate the schedule for the preservation of credit union records and require credit unions to retain records for at least the minimum period specified in the technical publication of the Financial Managers Society, Inc., of Chicago, Illinois, titled, "Records Retention Guidelines."

This publication is updated as the types of records change and, if it is adopted as a guideline, it will eliminate the need to maintain an individual schedule for credit unions.

Statutory authority for the rule:

SS. 186.235 (8) and 227.11 (2), Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

Estimated time to be spent by state employees — 40 hours. Review/approval by the Credit Union Review Board — 5 hours.

Financial Institutions**Subject:**

Ch. CU 70 (DFI-CU 70) – Relating to participation loan authority parity with federal credit unions.

Description of policy issues:*Description of the objective of the rule:*

The purpose of this rule is to permit Wisconsin-chartered credit unions to engage in loan participation contracts with one or more credit unions, credit union organizations, and financial organizations in the same manner that such participation contracts are available to federally chartered credit unions.

Description of existing relevant policies and new policies proposed to be included in the rule and analysis of policy alternatives:

Ch. CU 70 provides participation loan authority parity with federal credit unions. The interpretation of rules in this chapter shall be coordinated with and parallel to the interpretation of federal laws, regulations, and interpretations from which these rules are derived.

The federal rule on participation loans, 12 CFR Part 701.22, was revised effective January 26, 1996. The requirement that the participation agreement be executed prior to the final disbursement of the loan was eliminated. The proposed changes to ch. CU 70 will provide state-chartered credit unions parity with federal credit unions.

Statutory authority for the rule:

SS. 186.235 (8) and 227.11 (2), Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

Estimated time to be spent by state employees — 40 hours. Review/approval by the Credit Union Review Board — 5 hours.

Natural Resources**Subject:**

The Department is in the process of drafting a new Administrative Code which would consolidate requirements for laboratories and facilities reporting data to the agency.

Description of policy issues:*Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:*

The Department has identified several inconsistencies in data reporting requirements for facilities reporting data to the agency. These inconsistencies have made it difficult for the Department's customers to understand and follow applicable administrative rule requirements. Due to these inconsistencies, the Department will begin the process of drafting an administrative rule which will consolidate and, to the extent practicable, bring consistency to data reporting requirements. This will affect all facilities and laboratories which report data to this agency and DNR environmental programs. Comprehensive and consistent changes to data reporting requirements will be made for all Department rules at one time as part of this proposed rule package.

Explain the facts that necessitate the proposed change:

This action represents a change from past policy. The Programs' current data reporting requirements are inconsistent and scattered across many administrative codes. This makes them confusing to both Department staff and DNR customers.

Statutory authority for rule:

SS. 144.95, 144.025, 144.31, 160.21, 162.01 and 227.11, Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

The total anticipated time commitment is 380 hours. Two hearings are proposed to be held in Madison and Wausau.

Natural Resources**Subject:**

Rule promulgation for cost-sharing at contaminated sites.

Description of policy issues:*Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:*

Since the Environmental Fund was established in 1984, its primary purpose has been to address contamination problems where no known or willing responsible parties are adequately responding. Since 1984, the majority of the fund has been used for that purpose; however, as the legal aspects of the cleanup become more complicated, allocation approaches are refined, and the issue of fairness is debated more frequently, emphasis has been placed on defining orphan shares and seeking financial partnership with the state. The purpose of the proposed rule is to develop and promulgate the criteria the DNR will use to cost-share at contaminated sites.

Explain the facts that necessitate the proposed change:

This action represents a change from past policy. Historically, the Board has not been involved in decisions regarding disbursements from the environmental fund for cost-sharing purposes. Historically, these decisions have been made by staff. In the last year, requests for cost-sharing have greatly increased. Given the limited funds available, staff recommend a rule be developed to provide objective criteria for cost-sharing decisions.

Statutory authority for rule:

S. 227.11, Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

The total anticipated time commitment is 420 hours. Six hearings are proposed to be held in Milwaukee, Wausau, Spooner, Green Bay, Eau Claire and Janesville during July, 1997.

Natural Resources

Subject:

Permission to add additional compounds to the soil standards table in ch. NR 720, *Soil Quality Standards*, to develop guidance and outreach efforts for the continuing implementation of the ch. NR 720 rule series.

Description of policy issues:

Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:

On April 1, 1995, the soil standards code, ch. NR 720, went into effect. It has been the intention of the Department to add chemicals to the tables within the code for both the groundwater protection pathway and the direct contact protection pathway. Since the promulgation of this code, it has become apparent that the Department must provide supporting guidance on certain elements critical to implementation of this code. The Department is proposing to calculate standards for additional compounds, based upon the same process used to establish the existing soil standards.

Explain the facts that necessitate the proposed change:

This action does not represent a change from past policy.

Statutory authority for rule:

S. 227.11, Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

The total anticipated time commitment is 504 hours. Six hearings are proposed to be held in Milwaukee, Spooner, Wausau, Eau Claire, Green Bay and Madison during September/October, 1997.

Public Service Commission

Subject:

Ch. PSC 114 – Wisconsin State Electrical Code, Volume 1, relating to electrical safety of utility facilities.

Description of policy issues:

A description of policy issues to be resolved, including groups likely to be impacted or interested in the issue:

Volume 1 of the State Electrical Code is administered by the Commission. It deals with safety requirements for the installation, operation, and maintenance of primarily outdoor electric supply and communications lines and facilities used by utilities, including electric and telecommunications suppliers, railroads, and cable television providers.

Volume 1 has been and is based on the National Electrical Safety Code (NESC), which is also known as American National Standards Institute (ANSI) C2. The NESC is periodically revised and updated every three or four years, necessitating subsequent periodic revision of WSEC, Volume 1 to adopt the latest national standard. In 1979, 1982, 1985, 1988, 1991 and 1994, the Commission adopted the 1977, 1981, 1984, 1987, 1990 and 1993 editions of the NESC, respectively, with certain changes, deletions, and additions which apply in Wisconsin only and are contained in ch.PSC 114, Wis. Adm. Code.

The 1997 edition of the NESC was recently issued and a corresponding revision of ch. PSC 114 is now marked to complement the latest edition of the national code, correct deficiencies, and make any other necessary changes to update and improve the code. A volunteer technical advisory committee is normally appointed to prepare, review, and recommend change proposals. Typically representation includes people from affected utilities, railroads or related trade associations, unions, the Department of Commerce, Commission staff, and public members.

Statutory authority for rule:

Sections 196.02 (3), 196.74 and 227.11 (2), Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

The Commission estimates that approximately two hundred (200) hours of employee time will be required to develop the proposed revision.

Transportation

Subject:

S. Trans 201.15 – Relating to allowing the use of movable parts on off-premises category outdoor advertising signs (billboards).

Description of policy issues:

Description of the objective of the rule:

This proposal is to amend s. Trans 201.15, *Electronic signs*, to allow for the use of movable parts on off-premises category outdoor advertising signs (billboards).

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

Currently, moving parts are prohibited on off-premises (billboard) outdoor advertising signs. Improved technology is allowing many more options to the advertiser and the sign industry to convey their ad to the public.

In the past, federal policy prohibited moving parts on these signs. Recently, however, the Federal Highway Administration has revised its policy to allow moving parts on them. The proposed rule change would allow them in Wisconsin, as well.

Section Trans 201.15, electronic signs, allows such signs only for on-property signing. The proposed rule change would allow parts to be moved electronically on off-premises signs, while maintaining the prohibition on flashing, intermittent or moving lights, which create a safety hazard by distracting motorists.

The proposed rule change would regulate the speed and frequency of message change to minimize the distraction to the motorist such that the actual changing process will seldom be noticed.

Wisconsin could continue to prohibit moving parts on off-premises signs, despite the fact that the Federal Highway Administration now allows them; however, Wisconsin's policy has always been to be no more restrictive than the federal requirements.

Statutory authority for the rule:

S. 84.30 (14), Stats.

Estimates of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

It should take WisDOT staff approximately 24 hours to complete the revisions to the proposed rule change.

Transportation

Subject:

Ch. Trans 261 – Relating to mobile home multiple trip permits.

Description of policy issues:

Description of the objective of the rule:

This proposal is to amend ch. Trans 261, *Multiple Trip Permits for Mobile Home and Modular Building Sections*, to add a section allowing large dimension mobile homes to move for very short distances, to complete the manufacturing process. This would exclude movement to sales lots.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

Currently, large mobile homes must be moved only with single trip permits (one for each specific move). The proposed rulemaking would allow movement under multiple trip permits (annual or consecutive month, allowing multiple trips under one permit). This would reduce administrative burden for mobile home manufacturers.

Statutory authority for the rule:

S. 348.27(7), Stats.

Estimates of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

100 hours.

Workforce Development

Subject:

Ch. DWD 56 – Relating to the administration of child care funds and required copayments.

Description of policy issues:

Description of the objective of the rule:

By emergency rule, effective December 30, 1996, the Department adopted a schedule of required copayments for parents who receive state child care funds. Under this schedule, parents who receive a child care subsidy will not be required to pay more than 16% of gross income as a copayment. This rule would add the new copayment schedule to ch. DWD 56 on a permanent basis and would also make revisions to ch. DWD 56, to reflect the funding and administration of child care under the Wisconsin Works (W-2) program.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

The current emergency rule reflects the recommendation of the Governor's Child Care Work Group on the most effective way to promote the availability of affordable child care. The alternatives to this policy would involve the requirement of greater or lesser amounts for copayments.

Statutory authority for rule:

Sections 49.132 (2) (b), (2r) (d), (4) (d) and (e) 2 and (5) (e), and 49.155 (5), Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

It is estimated that no more than four state employees will be extensively involved in developing the rule, and, for each of these employees, the amount of time spent on the rule will be between 20 and 40 hours.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse

Please check the Bulletin of Proceedings for further information on a particular rule.

Employment Relations

Rule Submittal Date

On January 13, 1997, the Department of Employment Relations submitted a proposed administrative rule to the Wisconsin Legislative Council Administrative Rules Clearinghouse.

Analysis

The proposed rule amends ss. ER 18.01 (5) and ER 18.04 (2); and creates s. ER 18.15, relating to the creation of a catastrophic leave program that permits classified nonrepresented employees to donate certain types and amounts of leave credits to other classified nonrepresented employees who have been granted an unpaid leave of absence due to a catastrophic need, and removal of the reference to Good Friday as a legal holiday for state employees.

Agency Procedure for Promulgation

A public hearing is required and will be held:

February 19, 1997	Monona Room
Wednesday	Dept. of Employment Relations
11:30 a.m. to	137 East Wilson St.
1:00 p.m.	MADISON, WI

The Division of Classification and Compensation in the Department of Employment Relations is responsible for developing this rule.

Contact Person

If you have questions regarding this rule, you may contact:

Bob Van Hoesen, Division of Administrative Services
Telephone (608) 267-1003

Health and Family Services

Rule Submittal Date

On January 10, 1997, the Department of Health and Family Services submitted a proposed administrative rule to the Wisconsin Legislative Council Administrative Rules Clearinghouse, affecting ch. HFS 125, Wis. Adm. Code, relating to do-not-resuscitate bracelets to alert emergency health care personnel of do-not-resuscitate orders.

Analysis

Statutory authority: Sections 154.19 (3) (a) and 154.27, Stats., as created by 1995 Wis. Act 200

This order establishes specifications for the do-not-resuscitate bracelet worn by a qualified patient for whom a do-not-resuscitate order has been written by the attending physician at the patient's request under ss. 154.17 to 154.29, Stats., as created by 1995 Wis. Act 200. The do-not-resuscitate order is to be followed by emergency health care personnel in the event that the patient suffers cardiac or pulmonary arrest. Emergency health care personnel will not likely see the order itself, but will see the bracelet.

Besides the specifications for the do-not-resuscitate bracelet, the rulemaking order includes minimal procedures for emergency health care personnel to carry out in following a do-not-resuscitate order as evidenced by a do-not-resuscitate bracelet.

Agency Procedure for Promulgation

Public hearing under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by the DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

Contact Person

Jon Morgan, Division of Health
Telephone (608) 266-9781

Insurance, Commissioner of

Rule Submittal Date

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on January 15, 1997.

Analysis

These changes will affect s. Ins 3.46 (18), Wis. Adm. Code, relating to the requirements for tax deductible long-term care insurance in Wisconsin.

Agency Procedure for Promulgation

The date for the public hearing is February 19, 1997.

Contact Person

To obtain a copy of the proposed rule, contact Meg Gunderson at (608) 266-0110 in OCI Central Files. For additional information, please contact Robert Luck at (608) 266-0082 or e-mail at bluck@mail.state.wi.us in the OCI Legal Unit.

Natural Resources

Rule Submittal Date

On January 10, 1997, the Department of Natural Resources submitted a proposed rule [AM-34-96] to the Legislative Council Rules Clearinghouse.

Analysis

This proposed rule affects chs. NR 406, 407, 460 and 463, relating to federal emission standards for chromium electroplating and chromium anodizing operations.

Agency Procedure for Promulgation

A public hearing will be scheduled.

Contact Person

Roger Fritz, (608) 266-1201
Bureau of Air Management

Regulation and Licensing

Rule Submittal Date

On January 3, 1997, the Department of Regulation and Licensing submitted to the Wisconsin Legislative Council Administrative Rules Clearinghouse a proposed rule-making order repealing s. RL 25.02 (3), 25.03 (4) and 25.066 (6) (h); amending s. RL 25.066 (1); and creating s. RL 25.02 (2) (h) 5. cm., 25.025, 25.03 (3) (q) 2m. and 25.035.

Analysis

Statutes authorizing promulgation: Sections 227.11 (2), 452.05, 452.06, and 452.07

Statutes interpreted: ss. 452.05, 452.09 and 452.11

Sections 1 and 4 add a content item to the list of contents which must be covered in the 72-hour salesperson's course and the 36-hour broker's course. That content item is lead-based paint.

Section 2 repeals s. RL 25.02 (3) and Section 3 creates s. RL 25.025, which reduces from 20 hours to 3 hours the education which an out-of-state applicant for a broker's license must complete at a Wisconsin-approved school. This provision, both in the current rules and in this proposal, applies to an applicant who has held an active real estate broker's license in another licensing jurisdiction within the 2-year period prior to filing an application for an original broker's license in Wisconsin. Section 3 also lists the contents of the 3 hours and the amount of classroom time which must be devoted to each subject.

Section 5 repeals s. RL 25.03 (4) and Section 6 creates s. RL 25.035, which reduces from 23 hours to 13 hours the education which an out-of-state applicant for a salesperson's license must complete at a Wisconsin-approved school. This provision, both in the current rules and in this proposal, applies to an applicant who has held an active real estate salesperson's license in another licensing jurisdiction within the 2-year period prior to filing an application for an original salesperson's license in Wisconsin. Section 6 also lists the contents of the 13 hours and the amount of classroom time which must be devoted to each subject.

Section 7 removes a sentence which contains an expiration date for the Department's approval of continuing education programs and courses. This section also removes an unnecessary word in the last sentence of the current rule.

Section 8 repeals a requirement that schools approved for presenting real estate continuing education programs or courses send a list of those who passed or failed the program or course to the Department within 30 days after completion of the program or course. The Department has determined that other provisions in the rules which require schools to give licensees a certificate of attendance for each program or course successfully completed and to keep attendance records for at least 5 years are adequate for resolving questions about whether a licensee had completed the required continuing education.

Agency Procedure for Promulgation

A public hearing will be held on February 27, 1997.

Contact Person

Pamela Haack, Rules Center Coordinator
Telephone (608) 266-0495

Transportation***Rule Submittal Date***

On January 14, 1997, the Department of Transportation submitted a proposed administrative rule to the Wisconsin Legislative Council Administrative Rules Clearinghouse.

Analysis

The proposed rule, affecting chs. Trans 253, 255 and 259, relates to overweight permits.

Agency Procedure for Promulgation

Public hearings are required and will be held February 17 and 21, 1997.

The organizational unit responsible for promulgation of the proposed rule is Motor Vehicles, Infrastructure Development and State Patrol.

Contact Person

If you have questions regarding this rule, you may contact:

Julie A. Johnson, Paralegal
Telephone (608) 266-8810

NOTICE SECTION

Notice of Hearing Corrections

Notice is hereby given that pursuant to s. 227.11 (2) (a), Stats. and interpreting s. 303.01 (1) (c), Stats., the Department of Corrections will hold a public hearing at the time and place indicated below to consider the creation of s. DOC 313.025, Wis. Adm. Code, relating to the definition of a “prison industry”.

Hearing Information

February 14, 1997	Secretary's conference room
Friday	Third Floor
At 1:00 p.m.	149 East Wilson St.
	MADISON, WI

The hearing site is fully accessible to handicapped people. Parking for handicapped people is available in the Doty Street Parking Ramp. Handicapped people may enter the front of the building by using the driveway at the west end of the building.

Analysis Prepared by the Department of Corrections

The purpose of the rule is to define a prison industry and to distinguish existing prison industries from newly established prison industries.

Text of Proposed Rule

- DOC 313.025 Establishment of a prison industry. (1) For purposes of s. 303.01 (1) (c), Stats., and this chapter, “prison industry” means the production and sale of a product or service or a family of related products or services by prison inmates. The material or method used to produce the product or service does not define a prison industry.
- (2) A prison industry may be located at one or more prisons or one or more locations outside of a prison.
- (3) A prison industry may be established at one prison or location outside of a prison and moved to or expanded to another prison or another location outside of a prison and may acquire new or additional customers.

Initial Regulatory Flexibility Analysis

The proposed rule will have no effect on small businesses.

Fiscal Estimate

The proposed rule will have no fiscal impact on state government or local governments.

Contact Person

To find out more about the hearing or to submit a written statement concerning the proposed rule, contact:

Tom Van de Grift, (608) 267–7289
Office of Legal Counsel
Dept. of Corrections
P.O. Box 7925
Madison, WI 53707–7925

Written statements which are in addition to or in the place of verbal testimony must be submitted no later than **February 20, 1997** to the address shown above.

Notice of Hearing Department Of Commerce

Notice is given that pursuant to ss. 560.04 (2) and 560.032, Stats., the Department of Commerce proposes to hold a public hearing to consider the repeal of ch. DOD 13 and creation of ch. Comm 113, Wis. Adm. code, relating to annual allocation of volume cap on tax-exempt bonds.

Hearing Information

February 13, 1997
Thursday
9:00 a.m.

Madison
123 W. Washington Ave.
Room 6, Loraine Bldg.

Copies of the Rules

A copy of the rules to be considered may be obtained from the Department of Commerce, 123 W. Washington Ave., P.O. Box 7970, Madison, WI 53707, by calling (608) 266-7088 or at the appointed time and place the hearing is held.

Written Comments

Interested persons are invited to appear at the hearing and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views and suggested rewording in writing. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearing, may be submitted no later than 10 days, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should to Thomas H. Taylor, Deputy Secretary at the address noted above. Written comments will be given the same consideration as testimony presented at the hearings. Persons submitting comments will not receive individual responses.

This hearing is held in an accessible facility. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call Tabitha Bemis at (608) 266-7088 or Telecommunication Device for the Deaf (TDD) at (608) 264-8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translator or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

Analysis of Rules

Statutory Authority: ss. 560.02(4) and 560.032

Statute Interpreted: s. 560.032

Section 560.032, Stats. requires the Department of Commerce to submit annually a system for the allocation of the volume cap on the issuance of private activity bonds. This order complies with that statutory mandate by establishing a volume cap allocation system for calendar year 1997. Without this order, the availability of the annual volume cap for Wisconsin would be uncertain.

The private activity bonding available under the volume cap in Wisconsin during 1996 was approximately \$254 million. The volume cap for 1997 is based upon Wisconsin's 1996 population and should be approximately \$258 million. Of the total, the rules provide under this order that \$125 million will be allocated to the Wisconsin Housing and Economic Development Authority (WHEDA), including \$45 million that, in previous years, was set aside and held by the Department of Development for local issuers for multi-family housing; \$10 million will be allocated to the State Building Commission; and, the remaining \$119 million will be allocated to the Department of Commerce to be distributed to local issuers for a variety of economic development and other projects.

This order is similar to the rule currently in effect for 1996 with the following key exceptions:

1. The allocation for WHEDA will be increased from \$105 million to \$125 million. Any allocation for which bonds have not been issued by September 1 will be retained by WHEDA.
2. WHEDA's \$125 million allocation includes the \$45 million allocation that, in previous years, was set aside and held by the Department of Development for local issuers for multi-family housing. WHEDA traditionally has allocated approximately \$25 million of its \$105 million in volume cap for economic development projects under its Business Development Bond (BDB) program; the remaining \$80 million in volume cap has been used for single and multi-family housing bonds. WHEDA has informed the Department of Commerce that it will be focussing greater emphasis on single and multi-family housing, and it will assume responsibility for allocating up to \$45 million in volume cap to local issuers for multi-family housing projects pursuant to guidelines adopted by WHEDA.
3. Pursuant to s. Comm 113.05(2), the Department of Commerce will charge the following application fees to cover the cost of processing applications for volume cap: \$500 for smaller economic development bond issues that are \$2 million or less; and \$1,000 for all other projects. It is anticipated that these fees will be paid by the businesses which utilize the Department's allocation of volume cap.
4. The Department of Commerce is creating a new Volume Cap Allocation Council under s. 15.04(1)(c), Stats., to consider applications and make recommendations to the secretary as to the allocation of volume cap among different economic development projects based upon merit, as well as distress in the vicinity of the project. The council will include the secretary of the department, the executive director of WHEDA, and up to three additional members appointed by the secretary. Regular monthly council meetings will be conducted in compliance with s. 19.83, Stats.
5. In light of the heavy demand for volume cap during the last several years, volume cap will no longer be allocated on a first-come, first-serve basis. Instead, volume cap will be allocated based upon the merits of each project. Factors that will be considered by the department and the council will include, without limitation, the total number of jobs to be created or retained, the wages and benefits to be provided to new and existing employees, the total amount of investment in real estate improvements and capital equipment, and the level of distress in the vicinity of the project. The council may approve an allocation of the unified volume cap if it determines that the project serves a public purpose, the project will likely retain or increase employment in this state, the project is not likely to occur or continue without allocation of the unified volume cap, and the project will likely positively affect an area that meets at least 2 of the following criteria:
 - (a) The unemployment rate in the area is higher than the state average for the 18 months immediately preceding the date on which the application under sub. (1) was submitted to the department.
 - (b) The percentage of persons residing in the area who are members of households with household income levels at or below 80 percent of the statewide median household income is higher than the state average.
 - (c) The percentage of households in the area receiving unemployment compensation under ch. 108, Stats. or relief funded by a relief block grant under ch. 49, Stats. is higher than the state average.

(d) In the 36 months immediately preceding the date on which the application under sub. (1) was submitted to the department, a number of workers in the area were permanently laid off by their employer or became unemployed as a result of a business action subject to s. 109.07 (1m), Stats.

(e) An employer in the vicinity of the area has given public notice under s. 109.07 (1m), Stats. of either a business closing or a mass lay off of at least 25 employees, or 25 percent of the employees, of a business whichever is greater, that will result in a number of workers in the area being laid off permanently.

(f) Property values in the area have been declining.

(g) There has been a decline in the population in the area.

6. Under s. Comm 113.06(8), if a project is located in the territory of more than one municipality, a municipality in which a portion of the project will be located may apply for volume cap and then assign its volume cap to the municipality which will act as issuer for the bonds relating to the project. The purpose of this new subsection is to minimize the need for municipalities to undertake multiple bond issues in connection with a project that is located within the boundaries of more than one municipality.

The rule for 1997 provides for an allocation formula that will address the bonding needs of the state and local issuing authorities. Further, it will provide for a more efficient and effective use of the state's annual volume cap allocation, and thus, will provide all eligible users with the opportunity to obtain an allocation based upon the merit of their projects, as well as distress in the vicinity of a project.

Contact Person

Thomas H. Taylor, Deputy Secretary, Department of Commerce, 608/266-3203.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

The proposed rule is not expected to have any impact on small businesses except for businesses located within the state that desire to obtain the economic benefit of industrial revenue bond financing using the volume cap allocated by the Department of Commerce.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

Pursuant to s. Comm 113.05 (2), the Department will charge the following application fees to cover the cost of processing applications related to volume cap:

- a. \$500 for small economic development bond issues that are \$2 million or less; and
- b. \$1000 for all other projects.

3. Types of professional skills necessary for compliance with the rules.
None.

Fiscal Estimate

The Department of Commerce anticipates that the new rules in ch. Comm 113 will result in approximately \$80,000 in program revenue. That program revenue will be generated from the application fees payable by municipalities that apply for volume cap under the new rules. Pursuant to s. Comm 113.05 (2), the following application fees will be charged: \$500 for smaller economic development bond issues that are \$2 million or less; and, \$1,000 for all other projects. It is anticipated that such application fees will be paid by the businesses which utilize the Department's allocation of volume cap.

Notice of Hearing

Employment Relations

Notice is hereby given that pursuant to s. 230.04 (5), Stats., and interpreting s. 230.04 (1), Stats., the Department of Employment Relations will hold a public hearing at the time and place shown below to consider the creation of permanent rules relating to the creation of a catastrophic leave program that permits classified nonrepresented employees to donate certain types and amounts of leave credits to other classified nonrepresented employees who have been granted an unpaid leave of absence due to a catastrophic need, and removal of the reference to Good Friday as a legal holiday for state employees.

Hearing Information

February 19, 1997

Wednesday

11:30 a.m. to

1:00 p.m.

Monona Room (Lower Level)

Dept. of Employment Relations

137 East Wilson St.

MADISON, WI 53702

The hearing site is accessible to people with disabilities. If you need an interpreter, materials in alternate format, or other accommodations for this meeting, please inform the contact person listed at the end of this notice before the date of the hearing.

Written Comments

Written comments on the rules may be sent to the contact person by **Friday, February 21, 1997**. Written comments will receive the same consideration as written or oral testimony presented at the hearing.

Analysis Prepared by the Dept. of Employment Relations

Statutory authority: s. 230.04 (5)

Statutes interpreted: ss. 230.04 (1) and 230.35 (2r)

Current statutes and administrative rules provide specified amounts of paid annual leave, personal and legal holidays, sick leave, and leaves of absence without pay to classified nonrepresented employees for use by the employee. Situations have occurred where an employee has had to use all available paid leave and then take an unpaid leave of absence due to a catastrophic need of the employee or family member and has consequently experienced a severe financial crisis. Although fellow employees were willing to assist the employee in need by donating their own leave, these donations were not possible due to a lack of authority for such donations in the statutes or administrative rules. 1995 Wis. Act 37 provides the authority (in s. 230.35 (2r)) for the Secretary of the Department of Employment Relations to establish a catastrophic leave program, by rule, which would address such situations.

The proposed rule creates a catastrophic leave program for classified nonrepresented employees. It contains eligibility criteria which an employee must meet before being considered an eligible donor or recipient. Under the program, donors may donate certain types and amounts of leave credits to recipients who have been granted an unpaid leave of absence due to a catastrophic need, as defined under the rule. The rules specify the conditions under which leave may be donated by a donor and used by a recipient.

Appointing authorities will be responsible for implementing and administering the catastrophic leave program within the individual agency in accordance with policies specified in this rule.

Similar catastrophic leave programs are currently provided to the majority of employees covered by collective bargaining agreements under subch. V of ch. 111, Stats.

The rule also contains a technical amendment to s. ER 18.04 (2) to remove the reference to Good Friday which is no longer recognized as a legal holiday for state employees under s. 230.35 (4) (a), Stats., pursuant to enactment of 1995 Wis. Act 178.

Text of Rule

SECTION 1. ER 18.01 (5) is amended to read:

ER 18.01 (5) Except as provided in s. ER 18.15, "Leave credits" ~~mean~~ means earned but unused annual leave, termination leave, sabbatical leave, sick leave, personal and legal holiday time, and holiday compensatory time off. Leave credits do not include compensatory time off credits earned for working overtime.

SECTION 2. ER 18.04 (2) is amended to read:

ER 18.04 (2) (a) ~~Equivalent~~ Employees shall receive equivalent time off when the legal holiday falls on the employee's regularly scheduled day off.

(b) ~~Compensatory~~ Subject to subd. 1. to 5., employees shall receive compensatory time off at a rate of one and one-half times the number of hours worked, or a cash payment at a rate of one and one-half times the employee's regular rate for each hour the employee is assigned to work on a holiday enumerated in s. 230.35 (4) (a) 1., ~~1m. and 3.~~ Stats., ~~and the 5th through the 8th hours worked on Good Friday.~~ In addition, such working employee also receives the holiday off at a later date.

SECTION 3. ER 18.15 is created to read:

ER 18.15 Catastrophic leave. (1) DEFINITIONS. In this section:

- (a) "Catastrophic need" has the meaning given in s. 230.35 (2r) (a), Stats.
- (b) "Donor" means any person meeting the eligibility requirements under sub. (3).
- (c) "Employee" means any person who receives remuneration for services rendered to the state under an employer-employee relationship in the classified service, except limited term employees and employees covered by a collective bargaining agreement under subch. V of ch. 111, Stats.
- (d) "Leave credits" means earned but unused termination leave, sabbatical leave, personal and legal holiday time, and anticipated and earned but unused annual leave, subject to s. 230.35 (1) (b), Stats. Leave credits do not include sick leave credits or compensatory time off credits.
- (e) "Recipient" means any person meeting the eligibility requirements under sub. (2).
- (2) DETERMINING RECIPIENT ELIGIBILITY. To be an eligible recipient, an employee must satisfy all of the following conditions:
 - (a) Completed the first 6 months of an original probationary period in a permanent position or 6 months in a project position.
 - (b) Be on approved unpaid leave due to a catastrophic need of the employee or an immediate family member. The unpaid leave may be taken in noncontinuous increments.
 - (c) Anticipate an approved unpaid leave of at least 160 hours duration. The 160 hours shall be prorated for seasonal, sessional, school year, and part-time employees.
 - (d) Provided medical certification of the catastrophic need if required by the appointing authority.
 - (e) Used all available sick leave credits earned under ss. 36.30 and 230.35 (2), Stats.
 - (f) Have a leave balance of no more than 16 hours of combined accrued annual leave, including sabbatical/termination leave, and holiday credits.
 - (g) May not be receiving other salary replacement income.
 - (h) Be approved as an eligible recipient by the appointing authority or a designee.
- (3) DETERMINING DONOR ELIGIBILITY. To be an eligible donor, an employee must satisfy all of the following conditions:
 - (a) Completed the first 6 months of an original probationary period in a permanent position or 6 months in a project position.

- (b) Have at least one year of continuous service.
- (4) **LEAVE CREDIT DONATIONS AND USAGE.** (a) Subject to subd. 1. through 4., a donor may donate leave credits to one or more recipients in any calendar year.
1. The total amount of leave credits donated by a donor to all recipients in any calendar year may not exceed 24 hours. The 24 hour limit shall be prorated for seasonal, sessional, school year, and part–time employees.
2. A donor may donate leave credits only to recipients within the same employing unit except that donations may be made to recipients in different employing units in the same agency with the approval of the appointing authority.
3. Leave credit donations shall be in whole hour increments and on an hour for hour basis irrespective of the base hourly rates of the donor and recipient.
4. Leave credits donated in excess of the maximum number of leave credits required for a recipient shall be returned to the donor.
- (b) A recipient may not receive more than 640 hours of donated leave credits during any calendar year. The 640 hour limit shall be prorated for seasonal, sessional, school year, and part–time employees. The donated leave credits shall be used in order of receipt.
- (c) In a biweekly pay period, a recipient may not use more than 80 hours of leave or the number of hours consistent with the recipient’s regularly scheduled hours per pay period at the time the unpaid leave commenced, whichever is less.
- (d) Leave credits earned by a recipient shall be used prior to using donated leave credits, subject to subs. (2) (e) and (f). The appointing authority shall determine the increments in which leave credits are deducted.
- (e) If a recipient or donor no longer meets the definition of employee under sub. (1) (c), moves to another agency, or separates from employment, all unused donated leave credits shall be returned to the donor.
- (f) Leave credits donated to a recipient are not subject to limitations on end of year carryover of leave credits under s. ER 18.02 (6) (b) and ER 18.04 (4) (c).
- (g) Donors shall have the remainder of the calendar year and the first 6 months of the ensuing calendar year in which to use previously donated leave credits returned to the donor during the last 6 months of the calendar year.
- (5) **APPEAL PROVISIONS.** No employee may grieve under an agency’s grievance procedure any appointing authority’s decision relating to a catastrophic leave program or appeal any such decision to the commission under s. 230.44 or 230.45 (1) (c), Stats.

Fiscal Estimate

The fiscal effect on state agencies is indeterminable because it is impossible to identify how many employees will be eligible for the program and how many employees will actually apply for this benefit. However, since the rules are not authorizing additional leave, but only a transfer of leave credits between employees, the cost of the rule is expected to be negligible. Administrative costs likely can be absorbed by existing personnel and payroll employees in the agencies.

Initial Regulatory Flexibility Analysis

The proposed rule does not affect small business; therefore, an initial regulatory flexibility analysis is not required.

Contact People

Please contact the person listed below with questions about the hearing or for a copy of the rules or the fiscal estimate:

Bob Van Hoesen, (608) 267–1003
Dept. of Employment Relations
137 East Wilson St.
Madison, WI 53707

For questions about the substance of the rules, please contact:

Kathy Kopp, (608) 267–0343
Dept. of Employment Relations
137 East Wilson St.
Madison, WI 53707

Notice of Hearing

Insurance, Commissioner of

The Commissioner of Insurance, pursuant to the authority granted under s. 601.41 (3), Stats., and according to the procedures under s. 227.18, Stats., will hold a public hearing at the time and place indicated below, or as soon thereafter as the matter may be reached, to consider the creation of s. Ins 3.46 (18), relating to the requirements for tax deductible long term care insurance in Wisconsin.

Hearing Information

February 19, 1997 Room 23
Wednesday 121 East Wilson St.
10:00 a.m. MADISON, WI

Fiscal Estimate

There will be no state or local government fiscal effect.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

- a. Types of small businesses affected:* Insurance agents.
- b. Description of reporting and bookkeeping procedures required:*
None beyond those currently required.
- c. Description of professional skills required:*
None beyond those currently required.

Contact Person

A copy of the text of the proposed rule and fiscal estimate may be obtained from:

Meg Gunderson, (608) 266-0110
Services Section
Office of the Commissioner of Insurance
121 East Wilson Street
P. O. Box 7873
Madison, WI 53707-7873

Analysis Prepared by the Office of the Commissioner of Insurance

Statutory authority: ss. 600.01 (2), 601.41 (3), 601.42, 628.34 (12), and 632.82

Statutes interpreted: ss. 600.01, 628.34 (12)

These changes would allow tax deductible long term care policies to be sold in Wisconsin. Under the recently enacted P.L. 104-191, premiums for long term care policies will qualify for federal tax deductions and long term care insurance benefits will not be taxed if certain criteria are met. The criteria under the existing rules for long term care policies do not meet these standards. To be tax deductible a long term care policy must:

1. Use as a benefit trigger the term "substantial supervision" and use the term "substantial assistance";
2. Require that the claimant obtain a certification from a licensed health care practitioner, as defined in the federal law, as a condition for claim payment that the functional incapacity or inability to perform activities of daily living triggering benefits under the policy will last for at least 90 days;
3. Clearly disclose that the policy is a tax qualified long term care policy.

It appears that the new requirements will result in fewer claims qualifying for coverage under a tax deductible long term care policy than under the existing rules. Thus, the changes will require that there be disclosure of this fact and will require that a policy qualifying under the existing rules also be offered to each applicant.

Notice of Hearing

Regulation and Licensing

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2), 452.05, 452.06 and 452.07, Stats., and interpreting ss. 452.05, 452.09 and 452.11, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to repeal ss. RL 25.02 (3), 25.03 (4) and 25.066 (6) (h); to amend s. RL 25.066 (1); and to create ss. RL 25.02 (2) (h) 5 cm, 25.025, 25.03 (3) (q) 2m and 25.035, relating to educational requirements for real estate salesperson's and broker's licenses.

Hearing Information

February 27, 1997
Thursday
10:30 a.m.

Room 180
1400 East Washington Ave.
MADISON, WI

Written Comments

Interested people are invited to present information at the hearing. People appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to:

Office of Administrative Rules
Dept. of Regulation & Licensing
P.O. Box 8935
Madison, WI 53708

Written comments must be received by **March 14, 1997** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: ss. 227.11 (2), 452.05, 452.06 and 452.07

Statutes interpreted: ss. 452.05, 452.09 and 452.11

Sections 1 and 4 add a content item to the list of contents which must be covered in the 72-hour salesperson's course and the 36-hour broker's course. That content item is lead-based paint.

Section 2 repeals s. RL 25.02 (3) and Section 3 creates s. RL 25.025, which reduces from 20 hours to 3 hours the education which an out-of-state applicant for a broker's license must complete at a Wisconsin-approved school. This provision, both in the current rules and in this proposal, applies to an applicant who has held an active real estate broker's license in another licensing jurisdiction within the 2-year period prior to filing an application for an original broker's license in Wisconsin. Section 3 also lists the contents of the 3 hours and the amount of classroom time which must be devoted to each subject.

Section 5 repeals s. RL 25.03 (4) and Section 6 creates s. RL 25.035, which reduces from 23 hours to 13 hours the education which an out-of-state applicant for a salesperson's license must complete at a Wisconsin-approved school. This provision, both in the current rules and in this proposal, applies to an applicant who has held an active real estate salesperson's license in another licensing jurisdiction within the 2-year period prior to filing an application for an original salesperson's license in Wisconsin. Section 6 also lists the contents of the 13 hours and the amount of classroom time which must be devoted to each subject.

Section 7 removes a sentence which contains an expiration date for the Department's approval of continuing education programs and courses. This section also removes an unnecessary word in the last sentence of the current rule.

Section 8 repeals a requirement that schools approved for presenting real estate continuing education programs or courses send a list of those who passed or failed the program or course to the Department within 30 days after completion of the program or course. The Department has determined that other provisions in the rules which require schools to give licensees a certificate of attendance for each program or course successfully completed and to keep attendance records for at least 5 years are adequate for resolving questions about whether a licensee had completed the required continuing education.

Text of Rule

SECTION 1. RL 25.02 (2) (h) 5. cm. is created to read:

RL 25.02 (2) (h) 5. cm. Lead-based paint.

SECTION 2. RL 25.02 (3) is repealed.

SECTION 3. RL 25.025 is created to read:

RL 25.025 Satisfaction of broker's 36-hour program by out-of-state applicants. (1) An applicant who has held an active real estate broker's license in another licensing jurisdiction within the 2 year period prior to filing an application for an original real estate broker's license may satisfy the requirements of s. RL 25.02 (2) if the applicant submits evidence of attendance at 3 hours of education under sub. (2) at a school approved by the department under s. RL 25.05 or RL 25.06. The remaining contents of s. RL 25.02 (2) may be completed at any school.

(2) Contents of 3-hour course.

(a) *Broker-only contracts and contract issues.* Minimum of .5 hours.

1. Reynolds v. Dinger, 14.

2. State bar forms – s. RL 16.03 (1).

3. Uniform commercial code forms – s. RL 16.03 (1).

4. Forms used in other states.

5. Developing forms and contingency manual.

6. Supervising salespersons' use of approved forms.

(b) *Miscellaneous Wisconsin laws.* Minimum of .5 hours.

1. Change of name, address or trade name – ch. RL 23.
2. Trust accounts – s. 452.13, Stats., and ch. RL 18.

- a. Procedure to open trust account.
- b. Authorization to sign trust account checks.
- c. Bookkeeping system.
3. Policy manual – s. RL 17.08.

(c) Review, update or more in–depth coverage of any of the contents of the 13–hour course in s. RL 25.035 (2).

SECTION 4. RL 25.03 (3) (q) 2m is created to read:

RL 25.03 (3) (q) 2m. Lead–based paint.

SECTION 5. RL 25.03 (4) is repealed.

SECTION 6. RL 25.035 is created to read:

RL 25.035 Satisfaction of salesperson’s 72–hour program by out–of–state applicants. (1) An applicant who has held an active real estate salesperson’s license in another licensing jurisdiction within the 2–year period prior to filing an application for an original real estate salesperson’s license may satisfy the requirements of s. RL 25.03 (3) if the applicant submits evidence of attendance at no less than 13 hours of education in sub. (2) at a school approved by the department under s. RL 25.05 or RL 25.06. The remaining contents in s. RL 25.03 (3) may be completed at any school.

(2) Contents of 13–hour course.

(a) *Contracts.* Minimum of 3.5 hours.

1. The law of conveyances.

a. Conveyance defined – s. 706.01, Stats.

b. Requirements for a void conveyance – ss. 706.02, 706.03, Stats.

2. Chapter RL 16.

3. Review of forms approved by the department.

a. Listing contracts.

b. Offers to purchase.

c. Counteroffer and multiple counteroffer.

d. Amendment/notice.

e. Buyer agency agreement.

f. Grant of option.

g. Bill of sale.

h. Exchange agreement.

i. Cancellation and mutual release.

j. Other approved forms.

(b) *Agency.* Minimum of 2 hours.

1. Duties owed to parties and clients. – s. 452.133, Stats.

2. Requirement for an agency agreement and disclosure of agency – s. 452.135, Stats.

3. Multiple representation – s. 452.137, Stats.

4. Revisions to common law duties and responsibilities – s. 452.139, Stats.

(c) *Business conduct.* Minimum of 1 hour.

1. Direct contact with the public.

a. Competence in area of service – s. RL 24.03.

b. Tie–ins – s. RL 24.075.

c. Agreements in writing – s. RL 24.08.

d. Misleading market values – s. RL 24.09.

- e. Net listings – s. RL 24.10.
- 2. Advertising – s. RL 24.04.
- 3. Completing and presenting offers – ss. RL 24.12, 24.13.
- a. Confidentiality.
- b. Drafting and submitting offers.
- c. Prompt delivery to buyer.
- d. Fair presentation of offers.
- e. Prompt notification.
- 4. Self-dealing – s. RL 24.05.
- a. Dual compensation.
- b. Disclosure of interest.
- c. Referral services.
- d. Disclosure of profits.
- e. Disclosure of licensure.
- (d) *Consumer protection*. Minimum of 2 hours.
 - 1. Property inspections – s. RL 24.07 (1) (a).
 - 2. Inquiry by listing broker – s. RL 24.07 (1) (b).
 - 3. Disclosure of material adverse facts – s. RL 24.07 (2).
 - 4. Disclosure of material suggesting adverse material facts – s. RL 24.07 (3).
 - 5. Disclosure of side agreements – s. RL 24.07 (4).
 - 6. Reliance upon third parties – s. RL 24.07 (5).
 - 7. Investigations and inspections – s. 452.23, Stats.
 - 8. Civil liability for misrepresentation.
 - 9. Seller's disclosure duties – ch. 709, Stats.
- (e) *Fair housing*. Minimum of .5 hours. Wisconsin law – s. RL 24.03 (1), ss. 66.432, 101.22, Stats.
- (f) *Environmental factors*. Minimum of 1 hour.
 - 1. Underground storage tanks – ss. ILHR 10.74 to 10.805.
 - 2. Floodplains – s. 87.30, Stats., ss. NR 116.01, 116.06.
 - 3. Wetland – s. 23.32, Stats.
 - 4. Farmland preservation – ss. 91.01, 91.17, 91.19, 91.21, Stats.
 - 5. Rental unit energy efficiency standards – ss. ILHR 67.03, 67.08.
- (g) *Trust accounts and escrows*. Minimum of 1.5 hours.
 - 1. Trust accounts – s. 452.13, Stats., ch. RL 18.
 - a. Definition of trust account.
 - b. Interest-bearing and non-interest-bearing accounts.
 - c. Definition of trust funds.
 - d. When a trust account is required.
 - e. Deposit of trust funds.
 - 2. Escrow agreement procedures.
 - a. Escrows requiring separate escrow agreements.
 - b. Pre-closing earnest money escrows.
 - c. Post-closing escrows.

- d. Escrows not requiring separate escrow agreement.
- e. Drafting escrow agreements.

(h) *Miscellaneous issues.* Minimum of 1.5 hours.

- 1. Condominiums – ss. 703.08, 703.21, 703.33, Stats.
- 2. Homestead – ss. 706.01 (7), 766.065, Stats.
- 3. Taxes – ss. 74.15, 74.47 (1) and (2), Stats.
- 4. Taxation and transfer fee – ss. 77.22, 77.27, Stats.
- 5. Residential rental practices – ss. ATP 134.02, 134.06, 134.09.
- 6. Platting and subdivisions – ss. 236.01, 236.02, 236.03, 236.31, 236.33, 236.335, 236.35, Stats.
- 7. Documents and records – ch. RL 15.
- 8. Licensure and supervision of employees – ch. RL 17.
- 9. Commercial bulk sales – ss. 406.101, 406.102, 406.103, 406.104, 406.105, 406.107, 406.108, Stats.
- 10. Property provision for aliens and corporations – ss. 710.01, 710.02, Stats.
- 11. Property rights of married persons – ss. 766.31, 766.51, 766.60, 766.63, Stats.
- 12. Mortgage banking – s. 227.71, Stats., s. RL 40.03 (4) (b).

SECTION 7. RL 25.066 (1) is amended to read:

RL 25.066 Requirements for approval of continuing education schools, courses and instructors. (1) A school seeking initial approval from the department of the continuing education program or a course shall submit its application on a form provided by the department. ~~Approval of continuing education programs and courses shall terminate on December 31 following the last day of the licensing biennium.~~ A school shall submit applications for approval of continuing education programs and courses to the department before conducting any continuing education program or course which the department has prescribed for a subsequent licensing biennium.

SECTION 8. RL 25.066 (6) (h) is repealed.

Fiscal Estimate

- 1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
- 2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
- 3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the Department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to:

Pamela Haack, (608) 266-0495
Office of Administrative Rules
Dept. of Regulation & Licensing
1400 East Washington Ave., Room 171
P.O. Box 8935
Madison, WI 53708

Notice of Hearing

Regulation and Licensing

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing in ss. 157.19, 157.62 (2) and (7), 227.11 (2), 440.91, 440.92 (6) and (7), Stats., and interpreting ss. 157.11, 157.19, 157.62, 157.63, 440.91 and 440.92, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to repeal ss. RL 50.03 and 50.05; to renumber ch. RL 50; to renumber and amend s. RL 50.02; to amend s. RL 52.02 (2), 52.04 (2) (b), 53.02 (3), 54.04 (1) (b), (3) and (4), 54.05 (2) and (3); and to create ch. RL 50 and s. RL 52.04 (2) (d), relating to the regulation of cemetery authorities, cemetery salespersons and preneed sellers of cemetery merchandise.

Hearing Information

February 19, 1997
Wednesday
9:30 a.m.
Room 180
1400 E. Washington Ave.
MADISON, WI

Appearances at the Hearing

Interested people are invited to present information at the hearing. People appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to:

Office of Administrative Rules
Dept. of Regulation & Licensing
P.O. Box 8935
Madison, WI 53708

Written comments must be received by **March 5, 1997** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: ss. 157.19, 157.62 (2) and (7), 227.11 (2), 440.91, 440.92 (6) and (7)

Statutes interpreted: ss. 157.11, 157.19, 157.62, 157.63, 440.91 and 440.92

In this proposed rule-making order, the Department of Regulation and Licensing rennumbers ch. RL 50 to ch. RL 51 and creates a new ch. RL 50 which defines a term used in ch. 440, Stats., and which specifies the additional information which the Department may require of applicants for registration as a cemetery authority, a cemetery salesperson or a preneed seller. 1989 Wis. Act 307 initially required the Department to establish by rule fees for the registration of cemeteries, cemetery salespersons and preneed sellers of cemetery merchandise. The Act also stated and continues to state that the Department may establish by rule a report filing fee. Ch. RL 50 initially established such fees; however, the Biennial Budget Bill, 1991 Wis. Act 39, created statutory fees for registering cemetery authorities, cemetery salespersons and preneed sellers. Therefore, ch. RL 50 was amended to remove the registration fees. It still requires a \$40.00 reporting filing fee, with some exceptions. This rule proposal repeals the report filing fee required of cemetery authorities and preneed sellers of cemetery merchandise. The Department proposes removing the report filing fee from the rules because the registration renewal fees in s. 440.08 (2) (a) 21, 22 and 23, Stats., are based on a formula which includes the costs of regulation and enforcement. This formula is used to determine the renewal fees of all professions and occupations regulated by the Department. Costs associated with reviewing annual reports and conducting financial audits of care accounts and preneed trust accounts should be included in the registration renewal fee. There is no need for a separate report filing fee in the rule. The rule proposal also repeals obsolete provisions, removes the requirement that certain application forms or requests be notarized and clarifies several existing provisions in the rules.

Text of Rule

SECTION 1. Chapter RL 50 is renumbered chapter RL 51 and s. RL 51.02 is amended to read:

RL 51.02 Filing of annual reports. Cemetery authorities required to file an annual report under s. 157.62 (2), Stats., and preneed sellers required to file an annual report under s. 440.92 (6), Stats., shall do so on or before the 60th day after the last day of the reporting period. ~~The annual reports shall be accompanied by the filing fee required under s. RL 50.05 April 1 of each year.~~

SECTION 2. RL 50.03 and 50.05 are repealed.

SECTION 3. Chapter RL 50 is created to read:

Chapter RL 50

AUTHORITY, DEFINITIONS AND APPLICATIONS FOR REGISTRATION

RL 50.01 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 440.91 and 440.92, Stats.

RL 50.02 Definition. In s. 440.91 (2), Stats. and chs. RL 50 to 54, "expects to sell" means that an individual, after reviewing past sales of a prospective employing cemetery authority and current and anticipated market conditions affecting the sale of the employing cemetery's cemetery lots, reasonably believes that he or she will sell or solicit the sale of a total of 10 or more cemetery lots or mausoleum spaces during a calendar year.

RL 50.03 Applications for cemetery authority, cemetery salesperson and preneed seller. (1) **OTHER INFORMATION.** In addition to the information which the department must require of applicants for registration as a cemetery authority, a cemetery salesperson or a preneed seller pursuant to ss. 440.91 and 440.92, Stats., the department may require all of the following:

- (a) Information about any crimes committed by the applicant and any charges pending against the applicant.
- (b) Information about any surrender, resignation, cancellation or denial of an application for a credential or any disciplinary action taken against a credential held by the applicant in Wisconsin or another licensing jurisdiction.
- (c) Information about any disciplinary action pending against the applicant in any jurisdiction and relating to a credential held by the applicant.

(d) Information about any suits or claims ever having been filed against an applicant as a result of professional services rendered by the applicant.

(e) Information from an applicant for registration as a cemetery salesperson, relating to whether the applicant expects to sell 10 or more cemetery lots or mausoleum spaces during a calendar year.

(2) BASIS FOR DENIAL OF APPLICATION. The department may limit or deny an application for registration as a cemetery authority, cemetery salesperson or preneed seller for any of the grounds for which the department may discipline a credential holder under s. 440.93, Stats.

SECTION 4. RL 52.02 (2) is amended to read:

RL 52.02 (2) COMPLETE ANSWERS; CERTIFICATION. No application shall be processed until all questions appearing on the application are fully completed; and certified as accurate; ~~and sworn to before a notary public~~, and all required documents are received by the department.

SECTION 5. RL 52.04(2) (b) is amended to read:

RL 52.04 (2) (b) The bond shall be payable to the state department of regulation and licensing for the benefit of purchasers of stored property or their assignees.

SECTION 6. RL 52.04 (2) (d) is created to read:

RL 52.04 (2) (d) The bond shall remain in effect throughout the time that the warehouse remains approved by the department and the warehouse keeper shall submit a copy of each bond renewal certificate to the department.

SECTION 7. RL 53.02 (3) is amended to read:

RL 53.02 (3) COMPLETE ANSWERS; CERTIFICATION. No request for approval shall be processed until all questions appearing on the application are fully completed; and certified as accurate; ~~and sworn to before a notary public~~, and all required documents are received by the department.

SECTION 8. RL 54.04 (1) (b), (3) and (4) are amended to read:

RL 54.04 (1) (b) Publicly traded preferred or common stock of regulated utilities in the United States whose debt is rated AA or above by Standards & ~~Poors~~ Poor's or by Moody's Investors Services. Once the debt rating of the issuing utility drops below an A rating and remains below that rating for 2 consecutive quarters, the cemetery authority shall divest those instruments within 180 days or proceed under par. (e).

(3) No cemetery authority may invest in any entity or company in which an officer or trustee of the cemetery authority ~~has more than a 5%-ownership interest~~ is a shareholder who beneficially owns, holds or has the power to vote 5% or more of any class of securities issued by the entity or company.

(4) No cemetery authority may invest in any entity or company in which a spouse or child of an officer or trustee of the cemetery authority or other family member who receives one-half of his or her support from an officer or trustee ~~shall have more than a 5%-ownership interest~~ is a shareholder who beneficially owns, holds or has the power to vote 5% or more of any class of securities issued by the entity or company.

SECTION 9. RL 54.05 (2) and (3) are amended:

RL 54.05 (2) If the affidavit submitted to the department pursuant to sub. (1) lists investments in classes other than those described in s. RL 54.04 (1) (a) to (d), the affidavit shall be accompanied by a ~~sworn~~ written statement by a licensed investment advisor or a licensed securities broker, stating that his or her belief that such investments will provide safety equal to or greater than the investment classes described in s. RL 54.04 (1) (a) to (d).

(3) If the investment proposal meets the criteria set forth in s. RL 54.04, the department may issue a letter of approval. ~~Investments which are approved~~ A decision by the department not to approve an alternative investment may be appealed under ch. RL 1.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the Department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to:

Pamela Haack, (608) 266-0495
Office of Administrative Rules
Dept. of Regulation & Licensing
1400 East Washington Ave., Room 171
P.O. Box 8935
Madison, WI 53708

Notice of Hearings

Transportation

Notice is hereby given that pursuant to ss. 85.16 (1), 227.11 (2) (a), and 348.25 (3), Stats., the Department of Transportation will hold public hearings at the following locations to consider the creation of ch. Trans 253, and amendments to chs. Trans 255 and 259, Wis. Adm. Code, relating to overweight and oversize permits.

Hearing Information

February 17, 1997
Monday
10:00 a.m. to
12:00 p.m. (noon)
County Board Room, 3rd Floor
Marinette County Courthouse
MARINETTE, WI

This hearing site is fully accessible to people with disabilities.

February 21, 1997
Friday
1:30 p.m. to
3:30 p.m.
Room 421
Hill Farms State Trans. Bldg.
4802 Sheboygan Ave.

Parking for people with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

Written Comments and Contact Person

The public record on this proposed rulemaking will be held open until **February 28, 1997**, to permit the submission of written comments from people unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to:

Susan Kavulich
Motor Carrier Services Section, Room 151
Division of Motor Vehicles
Wis. Dept. of Transportation
P. O. Box 7981
Madison, WI 53707-7981

Note: This hearing is being conducted at 2 locations in order to give the public greater opportunity to present its facts, arguments and opinions. The records from both locations will be combined into a single Hearing Record on which the Department will base its decisions. Individuals need only attend one of the public hearings for their testimony to be fully considered.

Analysis Prepared by the Wis. Dept. of Transportation

Statutory authority: ss. 85.16 (1), 227.11 (2) (a), and 348.25 (3)

Statutes interpreted: ss. 348.06, 348.07, 348.15, 348.25, 348.26, and 348.27

General Summary of Proposed Rule. 1995 Wis. Act 163 amended s. 348.27 (9m), Stats., which allows the Department to issue permits for loads of bulk potatoes to be hauled at weights in excess of the statutory maximum weights of 80,000 pounds. These permits allow transportation of bulk potatoes from storage to rail loading facilities. The proposed rule amends ch. Trans 259 to conform with this statutory amendment. 1993 Wis. Act 439 created a statutory definition of “raw forest products” in s. 348.01 (bt), Stats. The proposed rule repeals the previously existing definition of “raw forest products” in s. Trans 259.02 (2) (d). 1995 Wis. Act 347 amended requirements for overweight and oversize vehicles operating within 11 miles of the Wisconsin/Michigan border, in s. 348.27 (9) (a), Stats. The proposed rule creates ch. Trans 253 that establishes standards and procedures for the issuance of these permits.

The proposed rule creates s. Trans 255.06 (6) that specifies that the person issued a permit for an overweight vehicle is responsible for ensuring that the vehicle clears all overhead structures by at least 3 inches. The proposed rule amends the definition of “fruit or vegetable” in s. Trans 259.02 (2) (a), by expanding the meaning to include not only fruits and vegetables for human consumption but also fruits and vegetables not intended for human consumption (for example, field corn and soybeans).

Fiscal Estimate

The Department estimates that there may be a fiscal impact on the liabilities or revenues of any county, city, village or town responsible for maintaining local roads.

Initial Regulatory Flexibility Analysis

This proposed rule will have no adverse impact on small businesses.

Copies of Proposed Rule

Copies of the rule may be obtained upon request, without cost, by writing to:

Susan Kavulich
Telephone (608) 261-6305
Motor Carrier Services Section, Room 151
Division of Motor Vehicles
Wis. Dept. of Transportation
P. O. Box 7981
Madison, WI 53707-7981

Hearing-impaired individuals may contact the Department using TDD (608) 266-0396. Alternate formats of the proposed rule will be provided to individuals at their request.

NOTICE OF SUBMISSION OF PROPOSED RULES TO THE PRESIDING OFFICER OF EACH HOUSE OF THE LEGISLATURE,
UNDER S. 227.19, STATS.

Please check the Bulletin of Proceedings for further information on a particular rule.

Agriculture, Trade and Consumer Protection (CR 96-138):

Ch. ATP 98 – Relating to financial standards and security requirements for vegetable contractors.

Agriculture, Trade and Consumer Protection (CR 96-139):

S. ATP 21.15 – Relating to potato late blight.

Barbering and Cosmetology (CR 95-217):

S. BC 2.03 (7) – Relating to standards of conduct.

Financial Institutions (CR 96-122):

S. Bkg 73.01 – Relating to adjustment service.

Insurance, Office of the Commissioner of (CR 96-153):

S. Ins 18.07 (5) – Relating to a decrease in 1996-97 premium rates for the Health Insurance Risk-Sharing Plan (HIRSP).

Natural Resources (CR 96-41):

S. NR 25.04 (2) (b) – Relating to the transfer of Great Lakes commercial fishing licenses upon the death or incapacity of the licensee.

Natural Resources (CR 96-42):

S. NR 25.08 (3) (b) – Relating to the transfer of individual licensee catch quotas upon the death or incapacity of the quota holder.

Natural Resources (CR 96-132):

S. NR 20.03 (1) (k) 7. – Relating to the daily bag limit for panfish.

Natural Resources (CR 96-134):

Chs. NR 190 and 191 – Relating to lake management planning grants and lake protection grants.

Natural Resources (CR 96-160):

SS. NR 25.02, 25.05, 25.06 and 25.07 – Relating to commercial fishing for whitefish and chubs in Green Bay and Lake Michigan.

Public Defender (CR 96-161):

S. PD 3.04 – Relating to partial indigency.

Transportation (CR 96-62):

Ch. Trans 301 – Relating to Human Services Vehicles (HSVs).

Transportation (CR 96-76):

SS. Trans 276.07 and 276.09 – Relating to allowing the operation of “double bottoms” (and certain other vehicles) on certain specified highways.

Transportation (CR 96-179):

Ch. Trans 76 – Relating to general transportation aids.

Workforce Development (CR 96-7):

SS. ILHR 100.02 and 132.001 and ch. ILHR 140 – Relating to unemployment insurance appeal rights and procedures.

Workforce Development (CR 96-156):

S. HSS 201.135 (s. DWD 11.135) – Relating to the 60-month lifetime limit on participation in the Job Opportunities and Basic Skills (JOBS) program or a Wisconsin Works (W-2) employment position or a combination thereof.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266-7275 for updated information on the effective dates for the listed rules.

Health & Family Services (CR 96-141):

An order repealing s. HSS 55.63 and repealing and recreating ss. HSS 55.55 to 55.62, relating to child care certification.

Effective 03-01-97.

Natural Resources (CR 96-85):

An order affecting chs. NR 19, 21 and 22, relating to turtle harvest.

Effective 03-01-97.

Natural Resources (CR 96-39):

An order affecting chs. NR 158, 700, 705, 706 and 708 and ss. NR 712.11, 716.05, 722.01, 724.01, 724.17 and 726.02, relating to hazardous substance discharge notification requirements and source confirmation.

Effective 03-01-97.

RULES PUBLISHED IN THIS WIS. ADM. REGISTER

*The following administrative rule orders have been adopted and published in the **January 31, 1997 Wisconsin Administrative Register**. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code, and also to the subscribers of the specific affected Code.*

For subscription information, contact Document Sales at (608) 266-3358.

Agriculture, Trade & Consumer Protection (CR 96-149):

An order repealing s. HSS 165.21 and creating ch. ATPC 77, relating to laboratory certification fees.
Effective 02-01-97.

Health & Family Services (CR 92-55):

An order affecting chs. HSS 46 and 55, relating to group day care centers.
Effective 08-01-97.

Health & Family Services (CR 96-90):

An order creating ss. HSS 101.03 (24m), (78m) and (78r), 105.53 and 107.36, relating to provision of school-based health care services reimbursed by the Medical Assistance (MA) program.
Effective 02-01-97.

Health & Family Services (CR 96-93):

An order affecting ss. HSS 172.04, 175.04, 178.05, 195.04, 196.04, 197.04 and 198.04, relating to permit fees for the operation of public swimming pools, recreational and educational camps, campgrounds, hotels, motels and tourist rooming houses, restaurants, bed and breakfast establishments, and food and beverage vending operations.
Effective 02-01-97.

Health & Family Services (CR 96-119):

An order affecting ss. HSS 172.03 and 172.05, relating to operation of public swimming pools.
Effective 02-01-97.

Health & Family Services (CR 96-124):

An order affecting ss. HSS 136.03 and 136.04, relating to embalming standards.
Effective 02-01-97.

Health & Family Services (CR 96-154):

An order affecting s. HSS 105.36 and ch. HSS 107, relating to elimination of coverage under the Medical Assistance (MA) program for services that are medically unnecessary, including services and items that enhance fertility in males or females, and limitation of coverage of certain other services to medically necessary situations.
Effective 02-01-97.

Natural Resources (CR 95-192):

An order affecting ss. NR 400.02, 415.02, 418.05, 419.07, 431.07, 438.03, 449.12, 468.01, 487.14 and 489.03 and chs. NR 404 to 410, 417, 420 to 425, 436, 439, 440, 445, 447, 484, 485, 488, 493 and 499, relating to revision of the definition of volatile organic compound (VOC) and to updating, clarification and corrective changes throughout the chs. NR 400 series.
Part effective 02-01-97.

Natural Resources (CR 96-98):

An order amending ss. NR 25.03 (1) (a) and 25.06 (1) (a) 2. and creating s. NR 25.03 (1) (a) 2., relating to commercial fishing licenses and the annual lake trout harvest limit on Lake Superior.
Effective 02-01-97.

Psychology Examining Board (CR 96-123):

An order affecting ss. Psy 2.01, 2.015, 2.05 and 3.01, relating to transcripts of undergraduate training, passing scores on examinations, and abandonment of applications.
Effective 02-01-97.

Public Instruction (CR 96-111):

An order affecting ss. PI 11.02 and 11.35, relating to the definition of handicapping conditions, including significant developmental delay.
Effective 02-01-97.

Public Instruction (CR 96-121):

An order affecting ch. PI 11, relating to the method of resolving disputes concerning children with exceptional educational needs (EEN) between school boards and the parents of those children.
Effective 02-01-97.

Public Service Commission (CR 96-17):

An order repealing and recreating ch. PSC 185, relating to standards for water public utility service.
Effective 02-01-97.

Regulation & Licensing (CR 96-130):

An order affecting ss. RL 34.01 and 34.011, relating to conditions for transporting firearms in vehicles by private security persons.
Effective 02-01-97.

Regulation & Licensing (CR 96-150):

An order creating ch. RL 130, relating to examinations and continuing education requirements for interior designers.
Effective 02-01-97.

Transportation (CR 96-70):

An order affecting s. Trans 139.05 (8), relating to fee for title and registration processing contractors.
Effective 02-01-97.

Transportation (CR 96-146):

An order affecting ss. Trans 325.01, 325.02, 326.01 and 328.03, relating to motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials, and motor carrier safety requirements for intrastate transportation of hazardous materials.
Effective 02-01-97.

Transportation (CR 96-147):

An order affecting ch. Trans 102, relating to driver license issuance.
Effective 02-01-97.

Transportation (CR 96-155):

An order amending s. Trans 269.11 (2a), relating to transportation of garbage or refuse permits.
Effective 02-01-97.

FINAL REGULATORY FLEXIBILITY ANALYSES

1. Agriculture, Trade & Consumer Protection (CR 96-149)

Ch. ATPC 77 – Lab certification rule.

Summary of Final Regulatory Flexibility Analysis:

This rule was created as a result of the 1995-97 biennial budget act, 1995 Wis. Act 27, which transferred much of the administration of Wisconsin's laboratory certification program from the department of health and social services to the department of agriculture, trade and consumer protection ("department"), effective July 1, 1996. The department will be responsible for certifying laboratories that test milk, food or water for compliance with public health standards prescribed by federal, state or local law. Wisconsin Act 27 states that the department's public health certification program must be funded by certification fees paid by the certification laboratories. The department must establish these fees by rule.

Current rules governing public health lab certification program are contained in ch. HSS 165, Wis. Adm. Code. The current rules remain in effect until the department amends or repeals them. The rule creates new certification and fee requirements for laboratories engaged in testing milk, water or food products. It also creates s. HSS 165.001 which states that none of the provisions of ch. HSS 165 relating to certification and fees apply to laboratories covered under the newly created ch. ATPC 77.

The rule identifies the laboratories which must be certified by the department. It also establishes a procedure by which a laboratory may obtain and annually renew its certification.

The rule establishes certification fees. A certified laboratory must pay an annual certification fee \$216 for each different type of test performed by the laboratory. If a laboratory applies for certification in mid-year, the certification fee is prorated by the number of months remaining in the calendar year for which the applicant seeks certification.

Summary of Comments from Legislative Committees:

The rule was referred to the Assembly Committee on Health on November 4, 1996 and to the Senate Committee on Agriculture, Transportation, Utilities and Financial Institutions on November 6, 1996. The department received no comments or request for hearing from either committee.

2. Health & Family Services (CR 96-90)

Chs. HSS 101, 105 & 107 – Medical assistance program reimbursement for provision of school-based health care services.

Summary of Final Regulatory Flexibility Analysis:

These rules apply to school districts and cooperative educational service agencies (CESAs). They will not directly affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

3. Health & Family Services (CR 96-154)

Chs. HSS 105 & 107 – Elimination of coverage under the Medical Assistance (MA) program for services that are medically unnecessary.

Summary of Final Regulatory Flexibility Analysis:

These rule changes will not have a significant economic impact on a substantial number of small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. They clarify that the MA program will not reimburse providers for the specified services or will not reimburse providers when the services are provided for certain purposes. In fact, the program has hardly ever paid for any of those services or for those purposes, but questions about coverage continue to be raised.

Summary of Comments:

No comments reported.

4. Health & Family Services (CR 96-124)

Ch. HSS 136 – Embalming standards.

Summary of Final Regulatory Flexibility Analysis:

These rule changes apply to the 1185 active licensed funeral directors and 159 apprentice funeral directors in the state. Although most of the 605 funeral establishments in Wisconsin are small businesses as "small business" is defined in s. 227.114 (1) (a), Stats., the changes will not have a significant economic impact on them. This is because the order only brings the rule language into conformity with the statutes, reorganizes and improves language use in one section of the rules and adds a provision calling attention to existing federal requirements for precautions to be taken when there may be exposure to blood-borne or other body fluid-borne pathogens.

Summary of Comments:

No comments were reported.

5. Health & Family Services (CR 96-119)

Ch. HSS 172 – Operation of public swimming pools.

Summary of Final Regulatory Flexibility Analysis:

Although many hotels, motels and apartment complexes that operate swimming pools are small businesses, as defined in s. 227.114 (1) (a), Stats., the rule changes will not have a significant economic impact on a substantial number of small businesses. That is because, apart from clarifying and updating the definition of public swimming pool, the rule changes are limited to changes in lifeguard staffing and equipment requirements. But since only pools with a surface area of 2000 or more square feet are required to have lifeguards, most swimming pools operated by small businesses will not have lifeguards and so are not subject to change in lifeguard staffing and equipment requirements.

Summary of Comments:

No comments were reported.

6. Health & Family Services (CR 96-093)

Chs. HSS 172, 175, 178 and 195 to 198, permit fee increases for public swimming pools, camps, campgrounds, hotels, motels and tourist rooming houses, restaurants, bed and breakfast establishments and food beverage vending operations and commissaries.

Summary of Final Regulatory Flexibility Analysis:

Most of the facilities affected by the permit fee increases are "small businesses," as small business is defined in s. 227.114 (1) (a), Stats.

The rule provide for an increase of about 10% in permit fees and also an increase in preinspection fees. The fee increases are to cover increased costs of program administration.

There is some variation in the new fees, as there was in the old fees, depending on the size of the operation. The variation is related to the amount of time it takes Department staff to complete an inspection.

At the Department's public hearing on the proposed rule changes providing for fee increases, the representative of the Wisconsin Innkeepers Association said her organization, which includes many small businesses, was opposed to the fee increases and asked for more justification for the 20% total increase over the past 2 years. The Department sent a letter to that organization providing more information about why the most recent increase in fees had become necessary.

Summary of Comments:

No comments were received.

7. Health & Family Services (CR 92-055)

Ch. HSS 46 – Group day care centers for children.

Summary of Final Regulatory Flexibility Analysis:

About 600 of the 1,900 group day care centers in the state are small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

These licensing rules for group day care centers are being renumbered to be a separate chapter of rules, as a convenience for center operators and parents. They are also being updated. In the process, unnecessary requirements are deleted, greater flexibility is given to operators and some new provisions are added to protect children in care and sometimes center staff. New provisions include requiring energy-absorbing surfaces beneath all outside play equipment and requiring criminal record checks on license applicants and current and prospective centers employees.

At the public hearings on the proposed rule, no one maintained that group day care centers organized as small businesses should be exempt from some requirements or given other special considerations because they are small businesses.

Summary of Comments of Legislative Standing Committees:

No comments were received. However, following a meeting on October 12, 1995 of Department staff with the chairperson and some members of the Assembly Committee on Children and Families and representatives of two interested associations, the Wisconsin Child Care Administrators Association and the Wisconsin Early Childhood Association, the Department made several modification in the rules. These included, in particular, changing back the educational and experience qualifications for new administrators, center directors and child care teachers to be those in the current rules.

8. Natural Resources (CR 96-98)

SS. NR 25.03 & 25.06 – Lake Superior commercial fishing licenses and lake trout quotas.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules can be interpreted to eliminate 11 small businesses, those being state licensed commercial fishing operations on lake Superior, based on the cooperative agreements reached between those 11 licensees and the Department. The proposed rules do not establish further requirements or obligations on small businesses.

Summary of Comments Legislative Review Committees:

The rules were reviewed by the Senate Committee of Environmental Resources and Urban Affairs and the Assembly Committee on Natural Resources. On August 21, 1996, the Assembly Committee held a public hearing and then requested the Department to consider modifications. The concern expressed at the public hearing was whether or not the rules could be interpreted to infer a property right in commercial fishing licenses. The Department has inserted a note in the rule stating that the Department's continuing position is that the trial retirement program of the commercial fishing licensees willing to work with the Department is not and cannot be based upon or in recognition of an alleged property right.

9. Psychology Examining Board (CR 96-123)

Chs. Psy 2 & 3 – Transcripts of undergraduate training, passing scores on examinations, and abandonment of applications.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

10. Public Instruction (CR 96-111)

Ch. PI 11 – Handicapping conditions including significant developmental delay.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a) Stats.

Summary of Comments:

No comments were reported.

11. Public Instruction (CR 96-121)

Ch. PI 11 – Method of resolving disputes concerning children with EEN between school boards and the parents of those children.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules were reviewed by the department's Small Business Review Advisory Committee on September 26, 1995. The committee agrees with the department that the rules will have a significant impact on a substantial number of small businesses regarding continuing education requirements. The following are comments of the committee members.

Continuing education requirements will require more staff time in order to respond to inquiries from registrants and schools. Staff will also have to spend time preparing mailings for registrants. They will also have to process renewal applications. There will be increased costs for registrants who have to obtain continuing education credit. Those costs may, in turn, be passed along to consumers.

The new interior design statutes require the department to develop rules regarding continuing education requirements. Towards that end, the department has required registrants to complete a minimum number of education credits. Because the statute mandates that the department include these rules provisions, the resultant costs are unavoidable. Registrants will be not required to file certificates of completion with the department for their continuing education, but will instead be required to certify on their renewal application forms that they have satisfied the required credits. While additional staff time will have to be spent on administering the continuing education provisions and the renewals, these increases are an inevitable result of having to register a new class of individuals.

Summary of Comments:

No comments were reported.

12. Public Service Commission (CR 96-17)

Ch. PSC 185 – Standards for water public utility service.

Summary of Final Regulatory Flexibility Analysis:

There will be no adverse fiscal impact of these rules on state or local units of government or on small business.

Summary of Comments:

No comments were reported.

13. Regulation & Licensing (CR 96-130)

Ch. RL 34 – Private security person or a private detective carrying a loaded firearm in a vehicle while on duty as a private security person.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

14. Transportation (CR 96-155)

Ch. Trans 269 – Transportation of garbage refuse permits.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule will have no adverse impact on small businesses.

Summary of Comments:

No comments were reported.

15. Transportation (CR 96-70)

S. Trans 139.05 – Fee for title and registration processing contractors.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule will have no adverse impact on small businesses beyond any effect imposed by the statutes.

Summary of Comments:

No comments were reported.

16. Transportation (CR 96-147)

Ch. Trans 102 – Driver license issuance.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule making will have no effect on small businesses.

Summary of Comments:

No comments were reported.

17. Transportation (CR 96-146)

Ch. Trans 325 – Motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials and motor carrier safety requirements for intrastate transportation of hazardous materials.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule will have no adverse impact on small businesses.

Summary of Comments:

No comments were reported.

PUBLIC NOTICE

Public Notice

Health & Family Services

(Medical Assistance Reimbursement of Hospitals)

The State of Wisconsin reimburses hospitals for medical services provided to low-income persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wis. Stats. Medicaid for Medical Assistance (MA) is administered by the State's Department of Health and Family Services. Federal statutes require a state plan for inpatient services that describes the methods and standards for paying for hospital inpatient services.

A state plan is now in effect for the reimbursement of inpatient hospital services, including reimbursement of Medicaid services provided by mental health hospitals owned and operated by the State. The Department is proposing to modify how state-operated mental health hospitals are reimbursed for Medicaid services effective **July 1, 1996**. The proposed method provides for payment at interim rates during the hospitals' fiscal year. After completion of the fiscal year, the hospitals' actual cost of providing Medicaid services for the year will be compared to the payments provided at the interim rates. If these payments exceed the costs, the difference will be recovered by the Medicaid program. If these payments are less than the costs, the difference will be paid to the state-operated mental health hospitals. Payments may be less than costs if federal limitations on Medicaid payments do not allow payment of the full cost of providing Medicaid services. In addition to the payment of the hospitals' costs, a disproportionate share hospital payment will be determined according to the currently effective state plan based on the hospitals' costs.

This change will ensure that the Medicaid program carries its share of the financial operating needs of the state's mental health hospitals. In addition, this change will increase payments to a level that is more comparable with the Medicaid rates paid under the DRG-based payment system to mental health hospitals not operated by the state.

Implementation of the above change to the State Plan for inpatient hospital services is expected to increase current annual expenditures of the Wisconsin Medicaid program by \$1,750,000 all funds (\$1,050,000 federal financial participation and \$700,000 general purpose revenue).

Copies of Proposed Changes

Copies of proposed changes will be sent to every county social services or human services department main office, where they will be available for public review. For more information, interested people may write to:

Hospital Reimbursement Unit
Bureau of Health Care Financing
FAX (608) 266-1096
Division of Health
P.O. Box 309
MADISON, WI 53701-0309

Written Comments

Written comments on the proposed changes are welcome and should be sent to the above address. The comments received on the changes will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily at:

Bureau of Health Care Financing
Room 265, State Office Building
One West Wilson Street
MADISON, WI

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